

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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SEPTEMBER 19 AND DECEMBER 12, 2012

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**Serial No. J-112-4**

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PART 9

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Printed for the use of the Committee on the Judiciary



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**NOMINATION OF KATHERINE POLK FAILLA,  
OF NEW YORK, NOMINEE TO BE U.S. DIS-  
TRICT JUDGE FOR THE SOUTHERN DIS-  
TRICT OF NEW YORK; PAMELA KI MAI  
CHEN, OF NEW YORK, NOMINEE TO BE U.S.  
DISTRICT JUDGE FOR THE EASTERN DIS-  
TRICT OF NEW YORK; HON. TROY L.  
NUNLEY, OF CALIFORNIA, NOMINEE TO BE  
U.S. DISTRICT JUDGE FOR THE EASTERN  
DISTRICT OF CALIFORNIA; HON. SHERI  
POLSTER CHAPPELL, OF FLORIDA, NOMI-  
NEE TO BE U.S. DISTRICT JUDGE FOR THE  
MIDDLE DISTRICT OF FLORIDA; AND MARK  
A. BARNETT, OF VIRGINIA, NOMINEE TO BE  
A JUDGE OF THE U.S. COURT OF INTER-  
NATIONAL TRADE**

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**WEDNESDAY, SEPTEMBER 19, 2012**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The Committee met, pursuant to notice, at 10:05 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senators Schumer, Feinstein, Franken, Blumenthal, Grassley, and Lee.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.  
SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. The hearing will come to order, and I want to welcome all of our nominees as well as their families and friends. I want to thank Senator Grassley for his hard work on behalf of our nominees to the federal bench.

And, first, I am going to introduce Senator Nelson, who is here, who will introduce Sheri Polster Chappell for the Middle District of Florida. Senator Nelson.

**PRESENTATION OF HON. SHERI POLSTER CHAPPELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA**

Senator NELSON. Thank you, Mr. Chairman, and indeed it is a great privilege again to be here in front of the Committee on behalf of my colleague Senator Rubio. The two of us, as you know, we take the partisanship out of the selection of judges by having a judicial nominating commission that the two of us appoint. And over the course of years, it has extraordinarily worked to produce the highest-quality recommendations for judges. And that is because you have prominent members of the community all over Florida that Senator Rubio and I select, and they do all of the receiving of the applications, the interviewing, and the selections for a particular position that is vacant. They will give us three names. We have an agreement with the White House that the White House will select from among the names—usually three, although in some cases four—that we send to them, and we will let the White House know if the Senators have an objection. And it is that process that, again, we come to you today with an excellent recommendation that the President then selected as the nominee, and we would encourage the Senate to confirm Judge Sheri Chappell.

She is a magistrate judge. It is the Middle District of Florida, but it is a district that runs all the way from the south that covers Collier County, which is Naples on the west coast, all the way north to Nassau County on the Georgia line on the east coast. That is how big this Middle District is. And as a result of our State having this rich tradition of working on both sides of the aisle to put forth the strong candidates, that is how we come to you today.

Judge Chappell is originally from Fort Myers, Florida. That is where the federal courthouse is in the southernmost southwest part of that Middle District. And if the Senate confirms her, it is my understanding that she wants to retain her residence there and be the resident federal judge in that courthouse.

She is joined today—and if you all would just wave your hands—by her husband, Christopher; their sons, Michael and Zachary; her brother, Barry Polster; and then her law clerks, Douglas Kemp, Brigitte Willauer, and Brigitte's husband, Nick Mizell, who is a former law clerk of Judge Chappell's.

She has served as the magistrate since 2003. Before that she was the lead county judge for the 12th Judicial Circuit in Florida. She began her career as an assistant States Attorney, and that goes all the way from 1987 to 2000.

She is an active member of the community. She served on the Florida Prosecuting Attorneys Association, the Domestic Violence Task Force, and the Truancy Board. She has a bachelor of arts degree from the University of Wisconsin and a juris doctor at Nova Southeastern. And so you can see that we have an extremely well-qualified nominee. I would recommend her for consideration to the Judiciary Committee.

Senator SCHUMER. Well, thank you, Senator Nelson. The Committee knows that you and Senator Rubio are very careful about whose names you send forward to the President, and we very much

appreciate your testimony. I know you have a busy schedule, so do not feel that you have to stay here and listen to everything else.

Senator NELSON. Thank you, Mr. Chairman.

Senator SCHUMER. Okay. Senator Grassley has—I mentioned the cooperation we have had from his staff before he came in. He has an opening statement. In the interest of time, he will submit it for the record. Without objection.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator SCHUMER. So next I am going to call on Senator Feinstein, who will introduce her nominee, Troy L. Nunley, for the United States District Court for the Eastern District of California.

**PRESENTATION OF HON. TROY L. NUNLEY, NOMINEE TO BE  
U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALI-  
FORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM  
THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman, Senator Grassley. I would like to offer my strong support for Judge Troy Nunley, whom I recommended to the President for the Eastern District of California after my bipartisan judicial advisory committee gave him a strong recommendation. I hope my colleagues will support his nomination.

Judge Nunley currently sits on the Sacramento Superior Court, and he lives in Sacramento with his wife, Susan Lawrence, who is here today. They have four children—Simone, Celeste, Dominic, and Dylan—two of whom are out of college and working and two who are younger and still in school. Also joining Judge Nunley today are his mother, Gennie Nunley Thompson, and his brother-in-law, Thomas Anthony, and I would like to welcome Judge Nunley's family to the Judiciary Committee today. If you would stand, we will just give you a little bit of applause, and it is great to have you here, so thank you very much.

[Applause.]

Senator FEINSTEIN. Judge Nunley was raised in the Hunters Point Housing Project of San Francisco, a place I know well. His father left home when he was two years old. His mother, then 21, raised the family of four children herself. She worked two jobs, attended college, and taught her children the value of hard work, integrity, and setting goals.

Judge Nunley went to high school at Sacred Heart Cathedral Preparatory. He was also a honor student. Early in his life, he witnessed the horrors of crime being committed against his own family as well as others in the community, and this motivated him to go into public service as a prosecutor.

He earned his bachelor's degree from Saint Mary's College in Moraga in 1986 and his law degree from the University of California, Hastings College of the Law in 1990.

Following law school, he became a deputy D.A. in the Alameda County D.A.'s office where he served from 1990 to 1994. As deputy D.A., he managed and prosecuted a large volume of criminal cases, including adult felony and misdemeanor cases. He has also worked on arraignments, bail hearings, and sentencing reports.

After two years in private practice as a solo practitioner, Mr. Nunley joined that Sacramento D.A.'s office, serving as deputy D.A. from 1996 to 1999. And during his prosecutorial career, he tried approximately 150 criminal cases. He joined the California Department of Justice in 1999, serving as Deputy Attorney General in the Appeals, Writs, and Trials Section of the office, as well as on the department's Hate Crimes Task Force.

Judge Nunley has handled numerous habeas petitions by State prisoners, experience that will serve him well on a court that is heavily burdened with habeas petitions and prisoner cases.

In 2002, he was appointed to serve as a superior court judge in Sacramento. In his 10 years on the bench, he has served with distinction, presiding over 414 cases, including felony and misdemeanor trials, civil trials, juvenile delinquency, and dependency cases.

While his background is that of a prosecutor, he has earned the respect of the criminal defense bar as well. In fact, the Sacramento Indigent Criminal Defense Panel name him Judge of the Year in 2009.

Despite his busy docket, Judge Nunley finds time to make meaningful contributions to the community. He frequently speaks to underprivileged youth on topics like juvenile justice and education. He has also served on parents' boards at numerous Sacramento area schools, and he continues to coach basketball and Little League baseball teams.

Before I close, Mr. Chairman, I would like to say a few words about the caseload in the Eastern District. While every judicial district in California is a judicial emergency, the court to which Judge Nunley has been nominated, the Eastern District of California, has the most dire situation. Its caseload is 1,100 weighted filings per authorized judgeship—the highest in the Nation and over twice the Nation's average. It also has nearly 1.3 million people per judgeship—the highest number in the Nation by almost 500,000.

These figures, inconsequential as they may seem to people who do not understand them, mean that justice is severely delayed for the eight million people who live in the Eastern District, including the Central Valley and the cities of Sacramento, Fresno, and Bakersfield. So moving Judge Nunley's nomination quickly, which I hope we can do, would help address this backlog. He is well qualified, he is dedicated. He will bring a lifetime of overcoming adversity, an impressive work ethic, a career as a prosecutor, 10 years of judicial experience, and sorely needed judicial resources to the federal bench in the Eastern District.

I am very happy to support him. I hope my colleagues will also, and thank you for this courtesy.

Senator SCHUMER. Well, thank you, Senator Feinstein. Again, like Senator Nelson, we know the care with which you nominate people or send people to the President to be nominated, and so that will matter a lot to the Committee.

Senator FEINSTEIN. Thank you.

Senator SCHUMER. Okay. Now, I am chairing the hearing today because we have two New Yorkers who are nominated to the bench. Both are truly outstanding, and so I would like to introduce both of them with the Committee's permission.



It is first my honor to introduce Pamela Chen, a nominee for the bench in the Eastern District of New York. First, I would like to acknowledge her guests: her partner, Amy Chester. Will you please raise your hand or stand up? The partner's sister, Sara Glasser; and numerous friends. The friends do not have to stand up. Just wave your hands, numerous friends. Oh, there are numerous friends. Okay.

Ms. Chen was born in Chicago, Illinois, where she grew up with her parents and brother. Her parents came here from China in the 1940s and built lives for themselves in this country. She came by her zeal for public service honestly. Her father worked for the Federal Government, for the IRS, for over 30 years. Her mother was a professor of political science and sociology.

When I first met Ms. Chen, I do not think it took more than five minutes before she talked about how proud she was of her parents, how grateful she was for the sacrifices they made so that she and her brother could not just thrive but excel in their studies and their professions.

Ms. Chen graduated from the University of Michigan and then Georgetown University. As a young lawyer, she first worked in two different litigation firms here in Washington, and then began her really illustrious career in service to our government by joining the Special Litigation Section of the Civil Rights Division of the Department of Justice. There she specialized in cases involving the rights of individuals confined to State and local facilities, such as nursing homes and facilities for the mentally ill.

Luckily for the people of New York, she came to the Office of the U.S. Attorney for the Eastern District in 1998, and she has been there ever since. It is one of the outstanding U.S. District Attorney's Offices in the country. She has been the chief of the Civil Rights Litigation Unit and is now chief of the Civil Rights Section for the office. She has prosecuted all manner of public corruption, gang, narcotics, and terrorism cases—the latter, of course, is one of the most active antiterrorism offices in the country.

Recently, she became internationally renowned for her tough and important prosecutions of human-trafficking cases. Along the way she has won nearly every award given by DOJ, and at the end of this month, she will receive the Partnership in Public Safety Award from the International Association of the Chiefs of Police for her work with the ICE on human trafficking.

So Ms. Chen is, all in all, not just a career prosecutor, although that in itself is a high calling, but a person whose lifelong dedication to justice and to simply doing the right thing bespeaks a perfect temperament for the bench. Anyone you talk to in New York will attest to this quality—or anyone who knows her. There are 19 million people. I do not think she knows every one of them. But anyone who knows her who you talk to in New York will attest to this quality, and I look forward to many more years of Ms. Chen's public service.

Our second nominee is equally outstanding. Katherine Failla is the President's nominee for the district court in the Southern District, and she is currently an Assistant U.S. Attorney with the office of the Southern District. She is one of those highly intelligent,

analytical individuals who was probably born to be a lawyer and, once a lawyer, almost certainly destined to be a judge.

Born in Edison, New Jersey, she earned a B.A. cum laude from William and Mary, her law degree from Harvard. After clerking for the federal court in New Jersey, she practices in New York City with the law firm of Morgan, Lewis & Bockius, and six years later joined the U.S. Attorney's Office, and she has practiced there for 12 years. She is now head of that office's Criminal Appeals Unit—that is one of the most important criminal appeals units in the country—and she defends some of the most important criminal cases in the Nation, including terrorism cases such as the East African bombing case against bin Laden and his associates, complex white-collar cases, and RICO cases.

Her colleagues report to a person that her advice on legal arguments and matters of judgment is the most sought after in the whole office, and it has hundreds of very qualified employees there.

While they may regret on occasion that her advice will soon be binding, when she becomes a judge, God willing, it is much to the benefit of the people of New York that Ms. Failla's formidable talents will soon be put to service on the bench.

Ms. Failla also frequently speaks of her parents with great pride and gratitude. Both of her parents went to college by dint of scholarships and extra jobs and instilled in their three children the importance of giving back to one's community. Today their children, grown, serve as a teacher's aide, a submarine commander, and, of course, a nominee to the federal bench. And I believe in diversity on the bench, and your family should add a little more even to that diversity. They are all here today, so let me introduce them. We have her husband, John Failla; her father, Thomas Polk; her mom, Mary Polk; her sister, Rosemary Polk Bullock; her brother, Commander Christopher Polk. Stand up so we can see you in uniform, and thank you for your service, Commander. And her sister-in-law, niece, and nephew. Would you like to stand up, sister-in-law, niece, and nephew? It is nice to see the sister-in-law, but it is really the niece and nephew we want to see.

[Laughter.]

Senator SCHUMER. They are too little to stand up. They are busy engaging in friendly and non-obstructive chatter as we read these lovely biographies.

[Laughter.]

Senator SCHUMER. Now, the last time that I had the pleasure of introducing a judicial nominee, I recounted some of the history of the United States District Court for the Western District of New York, and I promised at the request of every one of my colleagues on the Judiciary Committee that I would be back with more historical insights.

That was a joke.

Ms. Failla is being nominated to the court that is the oldest court in the Nation, even older than the Supreme Court, because it was organized just a few weeks before the Supreme Court pursuant to the Judiciary Act of 1789. One of the first members of the bar of the court was Aaron Burr, who later killed Alexander Hamilton very close to where the federal courthouse now stands on Pearl

Street. It was originally a maritime court, and its first judge, James Duane, complained bitterly that he had “nothing to do.”

That is hardly the case anymore. The Southern District is one of the busiest courts in the country. Ms. Failla’s devotion to New York and its bar is a much needed addition to that bench.

So, with that, let me call our first nominees—oh, I am sorry.

We have an introduction of Mark Allen Barnett, nominee for the Court of International Trade, and I am pleased to introduce him. He has been nominated by the President for that position. He currently serves as the Deputy Chief Counsel for the U.S. Department of Commerce, Office of the Chief Counsel for Import Administration. He has worked there since 1995. He was born in Reading, Pennsylvania, attended Dickinson College as an undergraduate, later receiving his law degree from the University of Michigan. Before beginning his long career in public service, Mr. Barnett worked as an associate in private practice here in Washington with the well-known firm of Steptoe & Johnson.

His experience in trade matters makes him one of the most qualified lawyers to be nominated to this important court. Mr. Barnett led negotiations and resolution of, among other issues, the comprehensive steel agreement with Russia, in order to stop that country from violating antidumping agreements, and the Doha Rules, which govern the way antidumping investigations are conducted and the way rules in this area are followed. Mr. Barnett has also written respected articles on Court of International Trade decisions, other trade issues, and sovereign immunity cases.

As a New Yorker, I look forward to having him join our city because the International Court of Trade sits in New York, and it is one of the most crucial courts in our country, and he would be a welcome addition.

Now, with that, let me call our five nominees to the table: Ms. Failla, Ms. Chen, Mr. Nunley, Ms. Chappell, and Mr. Barnett.

Oh, excuse me. I will do this in a minute. Okay. Will you please stand to be sworn? Do you affirm that the testimony you are about to give before the Committee will be the whole truth—sorry. I have done this so many times.

Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. FAILLA. I do.

Ms. CHEN. I do.

Judge NUNLEY. I do.

Judge CHAPPELL. I do.

Mr. BARNETT. I do.

Senator SCHUMER. You may be seated.

I made one little omission. We love introducing the families of the nominees here. It is always fun and nice, and I neglected to introduce Mr. Barnett’s guests, and so they may stand: his wife, Sara Franko; his son, Jasper Barnett. Hi, Jasper. Proud of your Dad, hmm? Good. His mother. Thank you. I am sure you are proud of your son. Two aunts and friends. You may wave. Aunts and friends, wave. Thank you. Okay.

And now we are ready to hear from each of our nominees. So each of you is entitled to give a very brief statement, and we will go from my left to right, so first, Ms. Failla.

**STATEMENT OF KATHERINE POLK FAILLA, NOMINEE TO BE  
U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF  
NEW YORK**

Ms. FAILLA. Thank you, Senator, and first of all, I would like to thank you, Senator, for recommending me to the President and for your very kind words this morning. I would also like to thank the President for the honor of the nomination, and I would like to thank the Committee for this opportunity to speak before you today.

I would like to again just say thanks and mention some of the names again of the family and friends who are here joining me today: my husband, John, who has been my rock for the last 15-plus years; my parents, Thomas and Mary Polk, who have just been extraordinary role models for their children; my sister, Rose Bullock, and her husband, Dave; my brother, Commander Christopher Polk; and my sister-in-law, Kelly; my very, very, cute nieces, Abigail, Emily, Chloe, and Alexis; and my nephew, Tommy.

There are also several people watching by the Webcast today, including Joseph Irenas, the Honorable Joseph Irenas, the judge for whom I clerked and whom I still revere; the Criminal Appeals Unit of the Southern District of New York U.S. Attorney's office, I believe one member of which has snuck in today because I think I saw Iris in the back; the other members of the United States Attorney's Office past and present; and partners at my former law firm of Morgan, Lewis & Bockius.

Thank you.

[The biographical information follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Katherine Polk Failla (née Katherine Mary Polk)

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Southern District of New York

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office for the Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007

4. **Birthplace:** State year and place of birth.

1969; Edison, New Jersey

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, Harvard Law School: J.D. (*cum laude*), 1993

1987 – 1990, College of William & Mary: B.A. (*summa cum laude*), 1990

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 – Present

United States Attorney's Office for the Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007  
Chief, Criminal Appeals Unit (2008 – present)

Deputy Chief, Criminal Appeals Unit (2004 – 2008)  
Assistant United States Attorney (2000 – present)

1994 – 2000  
Morgan Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
Associate

1993 – 1994  
United States District Court for the District of New Jersey  
Mitchell H. Cohen Building and U.S. Courthouse  
Fourth and Cooper Streets  
Camden, New Jersey 08101  
Law Clerk to the Honorable Joseph E. Irenas

Summer 1992  
Morgan Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
Summer Associate

Summer 1991  
Beattie Padovano LLC  
50 Chestnut Ridge Road  
Montvale, New Jersey 07645  
Summer Associate

Summer 1990  
Toys 'R' Us Corporate Headquarters (now located in Wayne, New Jersey)  
461 From Road  
Paramus, New Jersey 07652  
Legal Assistant

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Commendations in recognition of outstanding performance, dedicated service, and/or successful prosecutions from the following law enforcement agencies:  
 Federal Bureau of Investigation (2004)  
 New York Drug Enforcement Task Force (2003)  
 United States Customs Service (2002)

Co-Editor-in-Chief, *Harvard Journal of Law & Public Policy* (1993)  
 Managing Editor, *Harvard Journal of Law & Public Policy* (1992)  
 Articles Editor, *Harvard Journal of Law & Public Policy* (1991 – 1992)  
 College of William & Mary Dean's List (every semester)  
 Phi Beta Kappa, College of William & Mary (1989 – 1990)  
 High Honors for Senior Thesis (1990)  
 Richard Lee Morton Award for Outstanding History Graduate (1990)  
 Elsa Monk Krattiger Award for Outstanding Thesis in Early American History (1990)  
 Phi Alpha Theta History Honor Society, Vice President (1989 – 1990)  
 Phi Eta Sigma Freshman Honor Society (1987)  
 Alpha Lambda Delta Freshman Honor Society (1987)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1994  
 New Jersey, 1994

My New Jersey bar membership has been inactive since 2000. Otherwise, there have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit, 2002  
 United States District Court for the Southern District of New York, 1995  
 United States District Court for the Eastern District of New York, 1995

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Harvard Club of New York City (1993 – 1998)  
William & Mary Alumni Association (1990 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to Question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Anne C. Flannery & Katherine M. Polk, *Recent Decisions on the Attorney-Client Privilege and Their Impact on Internal Corporate Investigations*, Metropolitan Corporate Counsel, November 1996. Copy supplied.

Anne C. Flannery & Katherine M. Polk, *Between a Rock and a Hard Place: Internal Corporate Investigations and the Attorney-Client Privilege*, Practising Law Institute, October/November 1996. Copy supplied.

Note, *Inferring Actual Malice from Altered Quotations*, Masson v. New Yorker Magazine, Inc., 15 Harv. J.L. & Pub. Pol'y 255 (1992). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association.



committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In my capacity as Chief of Criminal Appeals, I have participated in the creation of reports, memoranda, and policy statements for and on behalf of the United States Attorney's Office for the Southern District of New York, but these materials are privileged.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not given any such testimony, official statement, or other communication.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

October 3, 2011: White Collar Crime 2011: Prosecutors and Regulators Speak, Practising Law Institute. I was part of a panel titled "Sentencing in White Collar Cases," and spoke on issues relating to guilty pleas and sentencings in white collar cases, including variations among pleas and plea agreements, the application of the United States Sentencing Guidelines in white collar cases, and sentencing trends in white collar cases among judges in the Southern District of New York. Video supplied.

March 23, 2011: I spoke to students in Columbia Law School's Second Circuit Externship Program concerning appellate advocacy before the Second Circuit and, more specifically, the United States Attorney's Office as an appellate litigant. I have no notes, transcript, or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10027.

October 20, 2010: I spoke to students in Columbia Law School's Second Circuit Externship Program concerning appellate advocacy before the Second Circuit. I have no notes, transcript, or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10027.

September 16, 2010: Federal Sentencing Update 2010, Association of the Bar for the City of New York (ABCNY), Committee on Criminal Law. I spoke on post-Booker sentencing trends in criminal cases among judges in the Southern District of New York. Video supplied.

January 27, 2010: I spoke to students taking the Legal Process Workshop II class at Columbia Law School concerning appellate advocacy before the Second Circuit. I have no notes, transcript, or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10027.

November 4, 2009: I spoke to students in Columbia Law School's Second Circuit Externship Program concerning appellate advocacy before the Second Circuit and, more specifically, the United States Attorney's Office as an appellate litigant. I have no notes, transcript, or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10027.

September 23, 2009: Fourth, Fifth, and Sixth Amendment Issues: New York City Department of Investigation (DOI) Continuing Legal Education Program. I lectured DOI investigators concerning Fourth, Fifth, and Sixth Amendment issues that frequently arise in the context of DOI investigations. Outlines supplied.

August 8, 2008: A Review of the Recent Supreme Court Term: American Bar Association (ABA) Criminal Justice Section. I participated on a panel discussing various criminal law decisions issued by the Supreme Court of the United States during the October 2007 Term. Among other areas, I focused on several decisions concerning money laundering. I have no notes, transcript, or recording, but a brief summary by the panel moderator is supplied. The Criminal Justice Section of the ABA is located at 740 15th Street, NW, Washington, DC 20005.

February 26, 2008: Ethics for the Litigator, New York County Lawyers' Association (NYCLA), CLE Institute. I participated on a panel that discussed various ethical issues that can arise when attorneys engage in aggressive litigation tactics at the pleading, discovery, trial, and/or settlement stages of a matter. Video supplied.

January 23, 2007: Ethical Bounds of Aggressive Litigation: 2007 Update, New York County Lawyers' Association, CLE Institute. I participated on a panel that discussed ethical issues that frequently arise for new or recently admitted attorneys, particularly those who engage in aggressive litigation tactics without considering the ramifications under the New York Lawyer's Code of Professional Responsibility. Video supplied.

December 21, 2005: Ethics in Context: Winter 2005, Practising Law Institute. I participated on a panel that discussed then-new and modified rules of professional responsibility in the context of issues such as zealous advocacy, the "crime-fraud exception" to the attorney-client privilege, the duty of candor to the court, and

conflicts of interest. I have no notes, transcript, or recording. The Practising Law Institute is located at 810 Seventh Avenue, New York, New York 10019.

September 14, 2005: Emerging Issues in Litigation Ethics, New York County Lawyers' Association, CLE Institute. I participated on a panel that discussed ethical issues that can arise for criminal defense attorneys during the course of representing their clients. I have no notes, transcript, or recording. The NYCLA is located at 14 Vesey Street, New York, New York 10007.

May 5, 2005: Emerging Ethical Issues for the Corporate Lawyer, New York County Lawyers' Association, CLE Institute. I participated on a panel that discussed ethical issues that might arise for in-house corporate counsel when their corporations are subject to litigation and/or criminal or agency investigation. Video supplied.

January 12, 2005: Ethics for the Litigator, New York County Lawyers' Association, CLE Institute. I participated on a panel that discussed the governing rules of professional responsibility and their "real-life" application in the litigation setting. I have no notes, transcript, or recording. The NYCLA is located at 14 Vesey Street, New York, New York 10007.

February 2, 2001: I spoke at Career Day at my high school alma mater concerning my career as a lawyer practicing in both the public and private sectors. I have no notes, transcript, or recording. The Academy of the Holy Angels is located at 315 Hillside Avenue, Demarest, New Jersey 07627.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have not given any such interviews.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ %

civil proceedings: \_\_\_\_\_ %  
 criminal proceedings: \_\_\_\_\_ %

- b. Provide citations for all opinions you have written, including concurrences and dissents.
  - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
  - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office, either elected or appointed, nor have I ever been an unsuccessful candidate or nominee.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held membership or office in any political party or election committee, nor have I held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

The Honorable Joseph E. Irenas  
United States District Judge for the District of New Jersey  
1993 – 1994

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 2000  
Morgan Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
Associate

2000 – Present  
United States Attorney's Office for the Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007  
Chief, Criminal Appeals Unit (2008 – Present)  
Deputy Chief, Criminal Appeals Unit (2004 – 2008)  
Assistant United States Attorney (2000 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After joining Morgan Lewis, I litigated numerous commercial matters in state and federal courts, as well as several regulatory matters before the United States Securities and Exchange Commission (SEC) and what was then known as the National Association of Securities Dealers (NASD, now FINRA). These cases implicated a wide range of legal issues, including federal and state securities laws, contract law, insurance and reinsurance law, and salvor-in-possession law.

From 1995 through 1999, I defended Merrill Lynch and several of its related entities in a series of civil litigations and regulatory proceedings stemming from the filing of bankruptcy by Orange County, California, in December of 1994. My work on the Orange County matters focused on issues of federal and state securities law, bankruptcy law, and the attorney-client privilege and work product doctrine. During that time period, I also represented several clients in securities regulatory matters before the

NASD and the SEC, and was associate counsel in the bench trial of a civil RICO action involving issues of reinsurance law.

In my last two years at Morgan Lewis, I worked on a number of commercial litigations (including a temporary restraining order) involving contract law and intellectual property issues. In addition, I conducted an internal investigation of a multi-national company in response to claims of accounting fraud, insider trading, and market manipulation. I then represented that company in civil shareholder class action lawsuits, regulatory proceedings before the SEC, and a criminal investigation.

While at Morgan Lewis, I counseled firm clients on risk management, compliance, and litigation issues. Among other things, I directed special supervision projects to identify and address compliance issues at several broker-dealers; I conducted internal investigations; and I advised clients on emerging legal issues and litigation exposure.

As a member of the United States Attorney's Office's General Crimes Unit in 2000 and 2001, I prosecuted a variety of offenses, including firearms trafficking, art fraud, child pornography, immigration offenses, and narcotics offenses. From 2001 to 2002, as a member of the Office's Narcotics Unit, I prosecuted narcotics trafficking and money laundering cases. From 2002 to 2004, I served as a member of the Securities and Commodities Fraud Task Force, where I prosecuted a range of securities frauds, including private placement fraud, foreign exchange fraud, and market manipulation cases. Even after my promotion to Deputy Chief of Criminal Appeals in 2004, I retained a slate of securities fraud cases that I continued to prosecute.

In the Criminal Appeals Unit, my work implicates the spectrum of criminal cases prosecuted by the Office. While in the Unit, I have edited the Government's briefs on appeal in approximately 380 cases. I have also developed expertise in cases involving terrorism offenses, securities fraud, fraud in the marketing and promotion of tax shelters, and the Sixth Amendment.

As Chief of the Criminal Appeals Unit, I also serve as counselor to the Office. In that capacity, I am consulted daily by other prosecutors so that we may identify, and resolve, appellate issues long before any appeal. Issues on which I am consulted often include the appropriate manner of conducting investigations; the decision to bring criminal charges; the Government's response to substantive defense motions; and legal and evidentiary issues that may arise during the course of a prosecution. In addition, I develop, and assist in developing, Office policy on issues of federal criminal law and procedure.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Morgan Lewis, I typically represented large multi-national corporations, financial services entities, and broker-dealers. After a few years at the firm, I joined the Securities Practice Group, which focused on administrative and regulatory proceedings instituted by the SEC or various self-regulatory organizations (including the New York Stock Exchange and the NASD), as well as shareholder class action lawsuits. I focused on issues implicating the federal securities laws. Also during this time, I specialized in attorney-client privilege and work product issues, as well as the conduct of internal investigations.

As an Assistant United States Attorney, I have represented the United States in criminal prosecutions (both trials and appeals) and in post-conviction litigation.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The majority of my practice has involved litigation, although I have also counseled clients and other lawyers. While an associate at Morgan Lewis, I appeared in federal court on a number of litigation matters. In 1996 and 1997, as part of a *pro bono* case in which I was involved, I also appeared in Bronx County Family Court.

At the United States Attorney's Office, from 2000 until 2005, I appeared almost daily before various judges in the Southern District of New York. As a member of the Criminal Appeals Unit, I continue to appear in the District Court, and I appear weekly (on average) in the United States Court of Appeals for the Second Circuit.

- i. Indicate the percentage of your practice in:

1. federal courts:	85%
2. state courts of record:	2%
3. other courts:	0%
4. administrative agencies:	13%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	30%
2. criminal proceedings:	70%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather



than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have had ten trials that proceeded to verdict. I was chief counsel for five trials, co-counsel for three, and served in a supervisory capacity on two.

- i. What percentage of these trials were:
  - 1. jury: 90%
  - 2. non-jury: 10%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. County of Orange v. Merrill Lynch & Co., No. SA CV-95-0037 (GLT) (C.D. Cal.); Irvine Ranch Water District v. Merrill Lynch & Co., No. SA CV-97-254 (GLT) (C.D. Cal.); Schools Excess Liability Fund v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Case No. SA CV 95-23 GLT (C.D. Cal.) (cases assigned to Taylor, D.J.)

Shortly after Orange County, California, filed for bankruptcy in December 1994, the County, as well as several municipal participants in its investment pool, filed civil lawsuits against Merrill Lynch and certain of its officers and employees. The lawsuits alleged contract and securities law claims arising from Merrill Lynch's sale of derivative securities to the then-County Treasurer for inclusion in the investment pool, as well as the firm's use of reverse repurchase transactions with the County. The cases involved a number of securities and bankruptcy law issues of first impression, as well as complicated factual issues arising from the nature of the derivative transactions at issue.

I defended Merrill Lynch and its employees in these lawsuits and in related regulatory matters. My work included drafting briefs on substantive securities law and discovery issues; preparing and defending senior Merrill Lynch executives at depositions in civil and regulatory proceedings; taking depositions of Orange County investment pool participants; and working with expert witnesses. In 1998, Merrill Lynch settled with Orange County and the majority of pool participants before trial. In 1999, it settled with the remainder of the pool participants, again before trial.

Co-Counsel

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Morgan Lewis & Bockius LLP  
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2. Banca Cremi, S.A. v. Alex. Brown & Sons, Inc., 132 F.3d 1017 (4th Cir. 1997)  
 (Magill, Luttig, Williams, C.JJ.)

Banca Cremi was a large Mexican bank and an institutional customer of the broker-dealer Alex. Brown & Sons. Over a period of more than two years, Banca Cremi purchased approximately \$140 million in collateralized mortgage obligation (CMO) derivatives. After initially earning profits in excess of \$2 million, Banca Cremi lost \$21 million after a drop in the liquidity of the CMO market in April 1994. Thereafter, Banca Cremi sued Alex. Brown in the United States District Court for the District of Maryland on various fraud claims, arguing that Alex. Brown had failed to disclose the risks adequately to the bank and that it had charged excessive markups. The District Court granted summary judgment, finding that Banca Cremi was a sophisticated institutional investor that could not establish "justifiable reliance" on the representations of Alex. Brown; that Alex. Brown lacked the requisite scienter; and that the markups were not excessive.

Banca Cremi appealed to the United States Court of Appeals for the Fourth Circuit. I was the principal drafter of an amicus brief filed by the PSA/Bond Market Association in support of Alex. Brown, which argued that: (i) it was inappropriate to extend the "suitability" doctrine to a principal-to-principal relationship between institutional investors and securities dealers in the fixed income market; (ii) Banca Cremi's losses had been caused by market forces, rather than any misconduct on the part of Alex. Brown; and (iii) no fraud claim could lie in the markups charged by Alex. Brown. The Fourth Circuit upheld the grant of summary judgment, finding, among other things, that (i) Banca Cremi had failed to show justifiable reliance on

Alex. Brown's representations; (ii) Alex. Brown had no fiduciary obligations to Banca Cremi, but rather interacted at arm's length in principal-to-principal dealings; and (iii) Banca Cremi had failed to state a cause of action based on purportedly excessive markups.

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3. United States v. Castellanos, 355 F.3d 56 (2d Cir. 2003) (Oakes, Newman, Pooler, C.JJ.)

On September 6, 2001, defendant Vasquez-Piedrahita was arrested at Miami International Airport while in possession of approximately 900 grams of heroin that had been hidden in his sneakers. He agreed to cooperate with the United States Customs Service and, to that end, participated in a controlled delivery of the heroin that led to the arrests of the Castellanoses, a married couple. Four days after the arrests, on September 11, 2001, all of the physical evidence in the case, which had been stored at the Customs Service's offices at the World Trade Center, was destroyed as a result of the terrorist attacks.

All three defendants were charged with participating in a heroin conspiracy. Vasquez-Piedrahita and Mr. Castellanos each pleaded guilty prior to trial. However, in light of the destruction of the evidence (including the video and audio tapes of the controlled delivery), Ms. Castellanos elected to proceed to trial (Mukasey, D.J.), where she was convicted and sentenced to 78 months' imprisonment. Her conviction and sentence were upheld by the Second Circuit in a reported decision.

I was assigned the case on September 7, 2001, and was lead counsel at trial. I later drafted the Government's brief on appeal and argued the matter before the Second Circuit. In 2002, I received a commendation from the United States Customs Service for my work on this case.

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4. United States v. Garcia, 413 F.3d 201 (2d Cir. 2005) (Calabresi, Parker, Raggi, C.JJ.); United States v. Valentin, 239 Fed. Appx. 674 (2d Cir. 2007) (Jacobs, Katzmann, Hall, C.JJ.)

The New York Drug Enforcement Task Force (DETF) investigated a wide-ranging cocaine and heroin trafficking organization that operated in Mexico, Baltimore, and New York City. At the conclusion of the investigation, the Government arrested seven individuals in New York and approximately the same number in Baltimore. Six of the individuals arrested in New York pleaded guilty prior to trial, and one was convicted after a jury trial. Of the individuals who pleaded guilty, one pleaded pursuant to a cooperation agreement with the Government, and provided substantial assistance in the investigation and prosecution of approximately 10 other defendants, including three defendants who were apprehended with 797 kilograms of cocaine.

My involvement in the case began with the drafting of a wiretap application to intercept communications occurring over one of the defendants' cellular telephones; I would later draft six additional wiretap applications. After the defendants were arrested, I oversaw the New York case, handling court appearances, pretrial motion responses, and guilty plea negotiations.

I served as lead counsel for the trial, after which the defendant was convicted on all counts. I also prepared the briefs for and successfully argued two appeals before the Second Circuit, the first of which followed the sentencings of the trial defendant and one of the pleading defendants, and the second of which followed the resentencings of these two defendants in light of United States v. Booker, 543 U.S. 220 (2005). I also handled post-conviction litigation in this case. In 2003, I received a DETF commendation for my work on the case.

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5. United States v. Schlisser, 2004 WL 736900 (S.D.N.Y. Apr. 6, 2004) (Berman, D.J.), aff'd, 168 Fed. Appx. 483 (2d Cir. 2007) (Jacobs, Ch.J., Raggi, C.J.)

Defendant Schlisser was a failed businessman who defrauded investors of millions of dollars in a complicated private placement fraud. In broad summary, the defendant touted “d-merc.com” – a non-existent subsidiary of the defendant’s failed company – as a promising internet start-up venture. In so doing, he duped a sophisticated stock promoter, a prominent New York City law firm, and numerous individual and corporate investors.

I worked with a securities fraud squad at the Federal Bureau of Investigation to investigate the case. I also prepared and successfully argued the Government’s pretrial motion for the disclosure of information pursuant to the crime-fraud exception to the attorney-client privilege. I then served as lead counsel at trial and obtained the defendant’s conviction on all charges. I prepared the Government’s brief on appeal and argued the matter in the Second Circuit, which affirmed the defendant’s conviction and sentence by summary order. In 2004, I received a commendation from the FBI for my work on the case.

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6. United States v. Stein, 435 F. Supp. 2d 330 (S.D.N.Y. 2006) (“Stein I”) (Kaplan, D.J.); United States v. Stein, 440 F. Supp. 2d 315 (S.D.N.Y. 2006) (“Stein II”) (Kaplan, D.J.); United States v. Stein, 452 F. Supp. 2d 230 (S.D.N.Y. 2006) (“Stein III”) (Kaplan, D.J.); United States v. Stein, 495 F. Supp. 2d 390 (S.D.N.Y. 2007) (“Stein IV”) (Kaplan, D.J.); United States v. Stein, 541 F.3d 130 (2d Cir. 2008) (Jacobs, Ch.J., Feinberg, Hall, C.J.J.); United States v. Pfaff, 619 F.3d 172 (2d Cir. 2010) (Jacobs, Ch. J., Winter, McLaughlin, C.J.J.), *cert. denied*, 131 S. Ct. 3059 (2011) (as to defendant Larson), 131 S. Ct. 3060 (2011) (as to defendant Ruble)

These cases stemmed from the Government’s investigation into fraudulent tax shelters that were marketed by the accounting firm KPMG LLP beginning in or about 1996. At the conclusion of the investigation, 19 KPMG officers, directors, and affiliates were arrested on charges of conspiracy to defraud the United States, tax evasion, and obstruction of the Internal Revenue Service. The defendants filed numerous pretrial motions, resulting in extensive briefing, hearings, and argument before the District Court. Ultimately, the District Court denied most of the defendants’ pretrial motions, but found that the Government had violated the Fifth and Sixth Amendment rights of 13 of the defendants; as a result, it suppressed certain evidence as to three defendants, and subsequently dismissed the indictment as to all 13 defendants. The Government appealed from the suppression and dismissal decisions to the Second Circuit; the Court affirmed the dismissal of the indictment, rendering the suppression issue moot.

The Government proceeded to a jury trial against four of the defendants; the remaining two defendants pleaded guilty. The jury convicted three of the trial defendants of tax evasion and acquitted the remaining defendant of all charges. The three defendants appealed from their convictions, and the Second Circuit affirmed the convictions and vacated the fine imposed on one of the defendants. Two of the defendants then petitioned to the Supreme Court of the United States for a writ of certiorari, but their petitions were denied.

I was not involved in the criminal investigation of the tax shelters but, due to the importance of the case, I was asked to assist the trial team in early 2006, several months after the indictment was returned but before any appeals had been filed. Initially, my role was somewhat limited. However, after the District Court questioned the constitutionality of the Government's conduct during the investigation and held an evidentiary hearing on that topic, I was assigned a more active role. Among other things, I drafted the Government's post-hearing submissions in response to the District Court's request for additional briefing on a number of Fifth and Sixth Amendment issues. I also led the appellate team that handled the Government's affirmative appeals from the District Court's suppression and dismissal decisions. During trial, I assisted the trial team in responding to numerous mid-trial defense motions and District Court requests. After the convictions of three of the defendants, I headed up the appellate team for the defensive appeal, which resulted in the affirmance of the convictions.

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7. United States v. Josephberg, 418 F. Supp. 2d 297 (S.D.N.Y. 2005) (Brieant, D.J.), rev'd, 459 F.3d 350 (2d Cir. 2006) (Kearse, Calabresi, Pooler, C.JJ.); United States v. Josephberg, 562 F.3d 478 (2d Cir. 2009) (Kearse, Sack, Katzmman, C.JJ.)

Defendant Josephberg was an investment banker who enlisted various clients to participate in fraudulent tax shelter transactions between 1977 and 1985. He was charged with multiple counts of tax evasion, the filing of false tax returns, failing to pay taxes, and endeavoring to obstruct and impede the due administration of the Internal Revenue Laws. Before trial, the District Court dismissed the IRS obstruction count on multiplicity grounds and the Government appealed. In a written opinion, the Second Circuit agreed with the Government that the obstruction count was legally distinct from the other counts in the indictment, and therefore did not implicate double jeopardy concerns.

The Government proceeded to trial against Josephberg, and the jury convicted him of all counts. The District Court sentenced Josephberg to a term of 50 months' imprisonment and Josephberg appealed, raising, among other things, challenges to the sufficiency of the evidence, the jury instructions, and the Government's conduct at trial. The Second Circuit rejected Josephberg's arguments and affirmed his conviction in a published decision.

After the District Court dismissed the obstruction count, I assisted the trial team in handling the Government's affirmative appeal. When Josephberg himself later appealed from his conviction and sentence, I assisted in the preparation of the Government's brief on appeal.

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8. In re Terrorist Bombings of U.S. Embassies in East Africa, 552 F.3d 93 (2d Cir. 2008); In re Terrorist Bombings of U.S. Embassies in East Africa, 552 F.3d 157 (2d Cir. 2008) (Fourth Amendment Challenges); In re Terrorist Bombings of U.S. Embassies in East Africa, 552 F.3d 177 (2d Cir. 2008) (Fifth Amendment Challenges); In re Terrorist Bombings of U.S. Embassies in East Africa, 553 F.3d 150 (2d Cir. 2008) (opinion denying rehearing petition); In re Terrorist Bombings of U.S. Embassies in East Africa, 407 Fed. Appx. 548 (2d Cir. 2011) (affirming, after remand, district court decision denying motion to reopen) (all cases heard by Feinberg, Newman, Cabranes, C.JJ.)

The 308-count indictment in this case, United States v. Bin Laden, S7 98 Cr. 1023 (LBS), charged Usama Bin Laden and members and associates of the al Qaeda terrorist group with conspiring to kill American citizens worldwide. The objects of the conspiracy included the bombings of the United States embassies in Nairobi,

Kenya, and Dar es Salaam, Tanzania, on August 7, 1998, during which 224 people, including 12 Americans, were killed. In 2001, four of the defendants were tried and found guilty of all counts. Thereafter, the Hon. Leonard B. Sand sentenced each of the defendants to life imprisonment.

Defendants Odeh, al-'Owhali, and el Hage appealed from their convictions and sentences, raising a host of challenges, many of which involved Fourth and Fifth Amendment issues of first impression. Among other things, the defendants challenged (i) the District Court's denial of a motion to suppress materials gathered in Kenya as part of a foreign intelligence collection operation; (ii) the admissibility of statements made by al-'Owhali and Odeh while in Kenya; (iii) the constitutionality of the Classified Information Procedures Act (CIPA); and (iv) the operation of the Foreign Intelligence Surveillance Act (FISA). In a series of published opinions, the Second Circuit rejected all of the defendants' challenges, and vacated el Hage's sentence so that the District Court could resentence him in light of the intervening Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2007). Relatedly, the Court affirmed the District Court's denial of al-'Owhali's motion to reopen his prior motion to suppress, on voluntariness grounds, statements made to law enforcement agents in Kenya.

I had substantial involvement in drafting and editing the Government's brief on appeal. During the pendency of the appeal, the Second Circuit issued a limited remand of al-'Owhali's case to the District Court so that the defendant could move to reopen a prior suppression hearing based on information that had been recently disclosed by the Government. During the remand proceedings before the Hon. Kevin Thomas Duffy, I had substantial involvement in drafting and editing the Government's briefing to the District Court and, after the defendant's motion was denied, its briefing to the Second Circuit.

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9. United States v. Stewart, 590 F.3d 93 (2d Cir. 2009) (Walker, Calabresi, Sack, C.JJ.), petition for reh'g denied, 597 F.3d 514 (2d Cir. 2010); United States v. Stewart, No. 10-3185 (2d Cir.) (Walker, Calabresi, Sack, C.JJ.)

This case involved the prosecution of three individuals for various terrorism offenses, arising from their maintenance of a communications network through which Sheikh Omar Abdel Rahman could maintain his position as the spiritual leader of a noted terrorist organization, the Islamic Group, despite his conviction and sentence of life imprisonment. Specifically, the three trial defendants and others received messages from Islamic Group leaders around the world, smuggled those messages to Abdel Rahman in prison, procured and disseminated Abdel Rahman's responses to those messages, and broadcast those responses.

All three defendants were convicted after trial. The District Court (Koeltl, D.J.) sentenced defendant Sattar to 288 months' imprisonment, defendant Stewart to 28 months' imprisonment, and defendant Yousry to 20 months' imprisonment. All three defendants appealed from their convictions, and the Government cross-appealed from all three sentences. On appeal, the defendants raised novel challenges to the use of Special Administrative Measures, the operation of the material support statute, 18 U.S.C. § 2339A, and, as to Stewart, the interplay between the crimes of conviction and the attorney-client relationship. In a published decision, the Second Circuit affirmed all three convictions and the sentences of Sattar and Yousry, but agreed with the Government that the sentence imposed on Stewart was procedurally, if not substantively, unreasonable.

On remand, the District Court resentenced Stewart principally to a term of 120 months' imprisonment, which itself was considerably below the 360-month range to which she was potentially exposed under the United States Sentencing Guidelines. Stewart appealed from her sentence, claiming, among other things, that her pre- and post-sentencing public statements were protected by the First Amendment and could not be considered by the District Court at her resentencing. The Second Circuit affirmed her sentence.

During the pretrial, trial, and sentencing phases of the matter, I provided guidance to the trial team on numerous legal issues. In the first appeal, I drafted and edited substantial portions of the Government's opening brief on appeal, as well as its reply brief in the cross-appeal. I then assisted the trial team during Stewart's resentencing proceedings. In the second appeal, I drafted portions of the Government's brief on appeal, and edited that brief in its entirety.

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10. United States v. Gupta, 650 F.3d 863 (2d Cir. 2011) (reported decision) (Walker, Parker, Hall, C.J.J.), petition for reh'g granted Sept. 15, 2011; United States v. Gupta, 426 Fed. Appx. 12 (2d Cir. 2011) (summary order) (Walker, Parker, Hall, C.J.J.)

Defendant Gupta was convicted of immigration fraud after a two-week jury trial. The District Court (Batts, D.J.) sentenced him to 51 months' imprisonment. While Gupta's case was on appeal, the Supreme Court decided Presley v. Georgia, 130 S. Ct. 721 (2010) (per curiam), in which it found that a courtroom closure during voir dire violated the defendant's Sixth Amendment right to a public trial. Gupta then obtained a remand to the District Court to develop the record concerning the exclusion of two spectators (his brother and girlfriend) from voir dire, and argued on appeal that his Sixth Amendment right had been violated.

A panel of the Second Circuit affirmed Gupta's conviction, concluding that any violation was subsumed by the "triviality exception" established by long-standing Second Circuit precedent. Gupta petitioned for panel rehearing and rehearing en banc, arguing that the exception did not survive Presley. The Court granted the petition, ordered rehearing en banc, and obtained supplemental briefing from the parties on issues including the right to a public trial under the Sixth Amendment, the triviality exception, and the effect of any waiver or forfeiture by Gupta of his Sixth Amendment claim. Oral argument before the en banc Court was held on December 14, 2011, and the matter remains under advisement.

I provided advice to the trial team throughout the trial and in connection with the sentencing in this case. When the rehearing petition was granted, I assisted in preparing and editing the Government's brief to the en banc Court. I then argued the matter on behalf of the Government before the en banc Court. Following the argument, I assisted in drafting supplemental submissions to the Court concerning the record on appeal and plain-error review.

Co-Counsel

Lee Renzin

U.S. Attorney's Office for the Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601  
(914) 993-1959

The Hon. Jesse M. Furman (formerly an AUSA)  
United States District Court for the Southern District of New York  
500 Pearl Street  
New York, New York 10007  
(212) 805-0282

Daniel A. Braun (on detail from the U.S. Attorney's Office for the Southern District of New York)  
Department of Justice  
1301 New York Avenue, NW  
Washington, D.C. 20530  
(202) 598-2238

Opposing Counsel

Susan C. Wolfe  
Hoffman Pollok  
260 Madison Avenue  
New York, New York 10016  
(212) 679-2900  
(counsel for defendant Gupta)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

At Morgan Lewis, I represented a number of corporate and individual clients in investigations brought by the SEC, the NASD, and other self-regulatory organizations

concerning possible violations of the securities laws. In several cases, I drafted submissions and/or participated in presentations to the respective agency that led the agency to decline to bring formal proceedings against the client.

In addition, as noted, I counseled other lawyers at Morgan Lewis, as well as a number of the firm's clients, on compliance and litigation issues. These issues included developing compliance protocols for broker-dealers, conducting internal investigations, and understanding and preserving the attorney-client privilege and the work product doctrine.

As Chief of Criminal Appeals at the United States Attorney's Office, I have consulted on hundreds of criminal cases in this Office, not all of which have proceeded to trial and, indeed, not all of which have resulted in the filing of criminal charges. In addition, I have drafted and assisted in drafting significant memoranda, briefs, and other pleadings for cases that are being handled by other Assistant United States Attorneys. Last year, for example, I drafted the Government's brief in opposition to a motion to dismiss, and argued the motion on behalf of the Government, in United States v. Daugerdas, a tax shelter prosecution involving former employees of BDO Seidman, Jenkins & Gilchrist, and Deutsche Bank. In addition, in just the past two years, I have provided advice and assistance (i) to the trial teams in Daugerdas, United States v. Rajaratnam (an insider trading case involving the Galleon Group hedge fund), United States v. Gansman (an insider trading case involving an attorney at Ernst & Young), United States v. Cuti (an accounting fraud case involving the former President and the former Chief Financial Officer of Duane Reade), United States v. Siddiqui (a terrorism case involving the attempted murder of American military personnel in Afghanistan), United States v. Cromitie (a terrorism case involving a plot to bomb a synagogue in Riverdale, New York), United States v. Bout (a terrorism prosecution of a noted arms dealer); and (ii) to the AUSAs prosecuting United States v. Sharef (a Foreign Corrupt Practices Act case involving former officers and agents of Siemens AG), United States v. Scheinberg (an Internet poker prosecution), United States v. Pettway (a kidnapping prosecution involving the 1987 theft of a baby from Harlem Hospital), United States v. Corrozzo (an organized crime prosecution of members of the Gambino Family), United States v. Kruger (a public corruption case involving, among others, a former New York State Senator), United States v. Coke (a RICO prosecution of a Jamaican drug lord), and United States v. Ahmed (a terrorist prosecution involving a conspiracy to support the al Shabaab foreign terrorist organization), among others.

In November 2009, I was assigned to the team of Assistant United States Attorneys prosecuting Khalid Sheikh Mohammed and four other detainees at the Guantanamo Bay Naval Station who were allegedly involved in the terrorist attacks of September 11, 2001. My focus was on identifying and resolving legal issues that might arise before and during the trial. In that regard, I participated in meetings to discuss, and engaged in analyses of, legal issues implicated by the 80-page indictment returned by a grand jury in the Southern District of New York in December 2009. After the decision was made to change the forum for the prosecution of the case, I was involved in the process that resulted in the dismissal of the indictment in April 2011.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any classes.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon retirement, I will receive payments from the Federal Employees Retirement System. I do not anticipate any other deferred income or benefits.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Generally speaking, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. More

specifically, I would recuse myself from any case that I worked on, supervised, or on which I was consulted as an Assistant United States Attorney.

My husband is a partner at the law firm of Proskauer Rose LLP. I would recuse myself from any cases in which Proskauer Rose is a party or is representing a party. In addition, I would recuse myself from any matter involving a member of my immediate family, including my siblings.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. Further, upon learning of any situation that a party or observer might perceive or identify as an actual or potential conflict of interest, I would alert the parties to the situation in question, and solicit their views. I would also consult with my judicial colleagues on these issues.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While working at Morgan Lewis, I represented an Albanian man who sought asylum in the United States as a result of abuses he had suffered as a student in Kosovo. The representation was facilitated by the Lawyers Committee for Human Rights (now known as Human Rights First). Over a period of almost five years, from 1994 until 1999, I assisted my client in obtaining asylum, employment authorization documents, and, ultimately, lawful permanent resident status.

Also while at Morgan Lewis, I represented a woman who had sought legal assistance through the Battered Women's Legal Services Project. Over a period of approximately two years, in 1996 and 1997, I assisted my client in obtaining child support from, and in working out a mutually acceptable custody schedule with, the father of her child.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a Confidential Questionnaire to the Chairman of the Judicial Screening Panel for Senator Charles E. Schumer on March 27, 2012. On April 10, 2012, I was interviewed by members of the Judicial Screening Panel. On April 22, 2012, I met with Senator Schumer. After that meeting, I was informed that Senator Schumer would recommend my name to President Obama. Since April 25, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On May 30, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 25, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.



AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Failla, Katherine P	2. Court or Organization Southern District of New York	3. Date of Report 09/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  District Judge (active)	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 9/25/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2012 to 6/6/2012
7. Chambers or Office Address  One St. Andrew's Plaza New York, NY 10007		
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)



NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1.

2.

3.

4.

5.

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)



NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1.

2.

3.

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 9

Name of Person Reporting	Date of Report
Falla, Katherine P.	06/25/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2011	Proskauer Rose LLP (partnership draw)
2. 2012	Proskauer Rose LLP (partnership draw)
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment,  
(includes those for spouse and dependent children; see pp. 23-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 9

Name of Person Reporting	Date of Report
Falla, Katherine P.	06/25/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE	CODE
1.				
2.				
3.				
4.				
5.				

## FINANCIAL DISCLOSURE REPORT

Page 4 of 9

Name of Person Reporting	Date of Report
Falla, Katherine P.	06/28/2012

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "N" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(f)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Northwestern Mutual Whole Life Policy	E	Int. Div.	N	T					
2. Northwestern Mutual Whole Life Policy	D	Int./Div.	M	T					
3. Wells Fargo Cash Equivalent Account	A	Interest	J	T					
4. Merrill Lynch Bank Deposit Program	A	Interest	J	T					
5. Intel Corp. Common Stock	A	Dividend	J	T					
6. Pfizer Inc. Common Stock	B	Dividend	K	T					
7. P&G Common Stock	B	Dividend	K	T					
8. Microsoft Corp. Common Stock	B	Dividend	K	T					
9. Hennessy Select Large Value Fund	A	Dividend	J	T					
10. T. Rowe Price Equity Income Fund	A	Dividend	K	T					
11. Invesco Asia Pacific Growth Fund	A	Dividend	J	T					
12. Gabello Gamco Growth Fund	A	Dividend	J	T					
13. Vanguard Equity Income Fund	A	Dividend	K	T					
14. Vanguard European Stock Index Fund	A	Dividend	J	T					
15. Vanguard NY Long Term Tax-Exempt Investor Fund		None	K	T					
16. IRA #1		None	K	T					
17. Invesco Van Kampen Comstock Fund									

1. Income Code(s) (See Columns H1 and H4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P3 - \$25,000,001 - \$50,000,000 Q - Appraisal U - Bank Value	B - \$1,001 - \$2,500 G - \$10,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Assessment W - Unsettled	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 C - Cash Method	E - \$15,001 - \$50,000
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## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Failla, Katherine P.	06/25/2012

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 44-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "N" after each asset except from prior disclosure	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or other)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller if private transaction
18 - Invesco Van Kampen Small Cap Value Y Fund									
19 - Morgan Stanley U.S. Government Securities Fund									
20 - Morgan Stanley Inst. Limited Duration I Fund									
21 - IRA #2		None	L	T					
22 - T. Rowe Price Retirement 2025 Fund									
23 - Buffalo Small Cap Fund									
24 - JP Morgan Emerging Markets Equity Inst. Fund									
25 - Schwab Retirement Advantage Money Fund									
26 - IRA #3		None	K	T					
27 - T. Rowe Price Retirement 2025 Fund									
28 - T. Rowe Price Retirement 2030 Fund									
29 - Buffalo Small Cap Fund									
30 - JP Morgan Emerging Markets Equity Inst. Fund									
31 - Schwab Retirement Advantage Money Fund									
32 - IRA #4		None	M	T					
33 - Vanguard Federal Money Market Fund									
34 - Vanguard Morgan Growth Fund									

1 Income Code (See Columns J1 and D1)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P3 - \$75,000,001 - \$50,000,000 Q - Appraisal U - Book Value	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 I - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 J2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
 Page 6 of 9

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Failla, Katherine P.	06/25/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of spouse and dependent children; see pp. 33-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or unit.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. - Vanguard Windsor II Fund									
36. - Vanguard 500 Index Fund (Admiral Shares) *									
37. IRA #5		None	N	T					
38. - Vanguard Federal Money Market Fund									
39. - Vanguard Growth Equity Fund									
40. - Vanguard PRIMECAP Fund (Admiral Shares)									
41. - Vanguard Target Retirement 2015 Fund									
42. - Vanguard Wellington Fund									
43. - Vanguard Windsor II Fund									
44. - Vanguard 500 Index Fund									
45. IRA #6		None	M	T					
46. - PIMCO RCM Mid Cap Fund									
47. - Alliance Bernstein Global Thematic Growth Fund									
48. - Blackrock Global Dynamic Fund									
49. - Davis NY Venture Fund									
50. - Putnam Int'l Equity Fund									
51. - Putnam Investors Fund									

 1 Income Item Codes  
 (See Columns B1 and D4)

 2 Value Codes  
 (See Columns C1 and D3)

 3 Value Method Codes  
 (See Column C3)

A - \$1,000 or less

F - \$50,001 - \$100,000

J - \$15,000 or less

N - \$250,001 - \$500,000

P1 - \$75,000,001 - \$100,000,000

Q - Appraisal

U - Book Value

B - \$1,001 - \$2,500

G - \$100,001 - \$1,000,000

K - \$15,001 - \$50,000

O - \$500,001 - \$1,000,000

R - Cost (Real Estate Only)

V - Other

C - \$2,501 - \$5,000

H - \$1,000,001 - \$5,000,000

L - \$50,001 - \$100,000

P2 - \$1,000,001 - \$5,000,000

P4 - More than \$5,000,000

S - Assessment

W - Estimated

D - \$5,001 - \$15,000

I1 - \$1,000,001 - \$5,000,000

I2 - More than \$5,000,000

M - \$100,001 - \$250,000

P2 - \$5,000,001 - \$25,000,000

T - Cash Market

4 - \$15,001 - \$50,000

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Falla, Katherine P.	06/25/2012

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 54-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "X's" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or mt.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller or private transaction
52. Putnam Voyager Fund									
53. Citibank Accounts	A	Interest	K	T					
54. Proskauer Rose Capital Account	D	Interest	N	T					

1. Income/Gain Codes  
(See Columns B1 and D4)
2. Value Codes  
(See Columns C1 and D3)
3. Value Method Codes  
(See Column C2)
- A - \$0.00 or less  
B - \$0.001 - \$100.000  
C - \$100.001 - \$1,000.000  
D - \$1,000.001 - \$10,000.000  
E - \$10,000.001 - \$100,000.000  
F - \$100,000.001 - \$1,000,000.000  
G - \$1,000,000.001 - \$10,000,000.000  
H - \$10,000,000.001 - \$100,000,000.000  
I - \$100,000,000.001 - \$1,000,000,000.000  
J - \$1,000,000,000.001 - \$10,000,000,000.000  
K - \$10,000,000,000.001 - \$100,000,000,000.000  
L - \$100,000,000,000.001 - \$1,000,000,000,000.000  
M - \$1,000,000,000,000.001 - \$10,000,000,000,000.000  
N - \$10,000,000,000,000.001 - \$100,000,000,000,000.000  
O - \$100,000,000,000,000.001 - \$1,000,000,000,000,000.000  
P - \$1,000,000,000,000,000.001 - \$10,000,000,000,000,000.000  
Q - \$10,000,000,000,000,000.001 - \$100,000,000,000,000,000.000  
R - Cost (Real Estate Only)  
S - Assessed  
T - Cash Market  
U - Other

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Falla, Katherine P.	06/25/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*



**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Failla, Katherine P.	06/25/2012

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Katherine P. Failla*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		15	605	Notes payable to banks-secured (auto)		145	734
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule	1	051	059	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		490	716
Real estate owned -- personal residence	1	600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		650	000				
Cash value-life insurance		608	791				
Other assets itemize:							
Tornabuoni Residence Club		670	000				
Thrift Savings Plan		301	466				
Proskauer Rose Capital Account		321	000	Total liabilities		636	450
				Net Worth	4	581	471
Total Assets	5	217	921	Total liabilities and net worth	5	217	921
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

Intel Corp. stock	\$ 9,124
Pfizer Inc. stock	18,624
Procter & Gamble Co. stock	43,073
Microsoft Corp. stock	49,896
Hennessy Select Large Value Fund	5,135
T. Rowe Price Equity Income Fund	16,700
Vanguard Equity Income Fund	19,286
Vanguard European Stock Index Fund	3,242
Vanguard NY Long-Term Tax-Exempt Fund	38,284
Vanguard Federal Money Market Fund	144,589
Vanguard Morgan Growth Fund	41,409
Vanguard Windsor II Fund	87,899
Vanguard 500 Index Fund	72,949
Vanguard Growth Equity Fund	8,237
Vanguard PRIMECAP Fund Admiral	77,513
Vanguard Target Retirement 2015 Fund	51,998
Vanguard Wellington Fund	50,252
Invesco Van Kampen Comstock Y Fund	30,512
Invesco Van Kampen Small Cap Value Y Fund	8,190
Morgan Stanley U.S. Govt. Securities Fund	9,183
Morgan Stanley Inst. Limited Duration I Fund	11,667
PIMCO RCM Mid Cap Fund	28,235
AllianceBernstein Global Thematic Growth Fund	7,701
Blackrock Global Dynamic Equity Fund	18,100
Davis NY Venture Fund	12,030
Putnam International Equity Fund	15,267
Putnam Investors Fund	7,239
Putnam Voyager Fund	23,981
Invesco Asia Pacific Growth Fund	1,132
Gabelli Gamco Growth Fund	4,949
T. Rowe Price Retirement 2025 Fund	40,125
T. Rowe Price Retirement 2030 Fund	33,471
Buffalo Small Cap Fund	13,042
JP Morgan Emerging Markets Equity Inst. Fund	19,098
Schwab Retirement Advantage Money Fund	29,505
Total Listed Securities	\$ 1,051,059

Real Estate Mortgages Payable

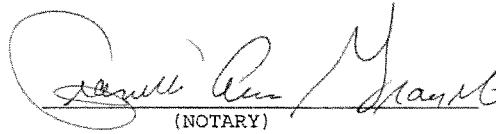
Personal residence	\$ 405,471
Home equity line of credit	85,245
Total Real Estate Mortgages Payable	\$490,716

AFFIDAVIT

I, Katherine Polk Failla, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

6/21/2012  
(DATE)

Katherine Polk Failla  
(NAME)

  
(NOTARY)

JEANETTE ANN GRAVES  
Notary Public, State of New York  
No. 01GR4995793  
Qualified in Kings County  
Commission Expires Nov 30, 2013

Senator SCHUMER. Thank you, Ms. Failla.  
Ms. Chen.

**STATEMENT OF PAMELA KI MAI CHEN, NOMINEE TO BE U.S.  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK**

Ms. CHEN. First, Senator, I would like to thank you for your kind introduction and for recommending me for this incredible honor. I would also like to thank President Obama for nominating me. I am deeply humbled by the nomination.

With me today, as you mentioned, Senator, are my partner, Amy Chester, and her sister, Sara Glasser, who came here from New York. Also watching by Webcast in Vermont, New York, and California are our families: the Chesters, the Chens, the Marcuses, and the Glassers.

I also want to thank the many dear friends and colleagues who have come here today to support me, as well as the many others who have supported me throughout this process.

Last, I would like to thank you for chairing this hearing and also to the entire Committee for allowing me the privilege to appear before you.

I look forward to answering your questions.  
[The biographical information follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Pamela Ki Mai Chen

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of New York

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

4. **Birthplace:** State year and place of birth.

1961; Chicago, Illinois

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 – 1986, Georgetown University Law Center; J.D., 1986

1979 – 1983, University of Michigan; B.A., 1983

1982, University of Freiburg, semester of study abroad; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2008 – Present

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East

Brooklyn, New York 11201  
 Chief, Civil Rights Section, Criminal Division (2008 – Present)  
 Assistant United States Attorney (2008 – Present)

2008  
 New York State Division of Human Rights  
 One Fordham Plaza, Fourth Floor  
 Bronx, New York 10458  
 Deputy Commissioner for Enforcement

1998 – 2007  
 United States Attorney's Office for the Eastern District of New York  
 271 Cadman Plaza East  
 Brooklyn, New York 11201  
 Chief, Civil Rights Section, Criminal Division (2006 – 2007)  
 Deputy Chief, Public Integrity Section (2006 – 2007)  
 Chief, Civil Rights Litigation (2003 – 2006)  
 Violent Crimes and Terrorism Section (1999 – 2003)  
 General Crimes Section (1998 – 1999)  
 Assistant United States Attorney (1998 – 2007)

1991 – 1998  
 United States Department of Justice  
 Civil Rights Division, Special Litigation Section  
 601 D Street, N.W.  
 Washington, D.C. 20530  
 Senior Trial Attorney (1992 – 1998)  
 Trial Attorney (1991 – 1992)

1989 – 1991  
 Asbill, Junkin, Myers & Buffone  
 1615 New Hampshire Avenue, N.W.  
 Washington, D.C. 20009  
 Associate

1986 – 1989  
 Arnold & Porter  
 555 12th Street, N.W.  
 Washington, D.C. 20004  
 Associate (1986 – 1989)  
 Legal Intern (1986)

Summer 1985  
 Sidley & Austin  
 One South Dearborn

Chicago, Illinois 60603  
Summer Associate

Summer 1984  
United States Army Judge Advocate General Corps  
Munich, Germany  
Summer Legal Intern

Summer 1983  
G.D. Searle, Inc.  
5200 Old Orchard Road  
Skokie, Illinois 60076  
Temporary Secretary

Other Affiliations (uncompensated):

1985 – 1986  
Asian Pacific American Law Students Association  
Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Society of Asian Federal Officers, Prosecutor of the Year Award (2012)

New York County Lawyers' Association, Public Service Award (2010)

Freedom Network U.S.A., Paul Wellstone Award (2010)

United States Attorney's Office for the Eastern District of New York, Excellence in Criminal Litigation Award (2009)

New York City National Organization for Women, Susan B. Anthony Award (2007)



United States Department of Justice, Director's Award for Superior Performance by a Litigative Team (2006)

United States Department of Justice, John Marshall Award for Trial of Litigation (2005)

Federal Law Enforcement Officers Association, Group Achievement Award (2004)

United States Department of Justice, Certificate of Commendation (1998)

United States Department of Justice, Meritorious Award (1997)

United States Department of Justice, Special Achievement Awards (1996, 1995, 1994, 1993 and 1992)

Georgetown University Law Center, *Tax Lawyer*, Associate Editor (1984 – 1986)

University of Michigan, Honors in Philosophy (1983)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Asian American Bar Association of New York

Asian Pacific American Bar Association of the Greater Washington D.C. Area  
National Convention Co-Chairperson (1992)

Asian Pacific American Law Students Association, Georgetown University Law Center  
President (1985 – 1986)

Criminal Justice Act Felony I Appointment Committee

National Asian Pacific American Bar Association

National Asian Pacific American Law Students Association

National Asian Pacific Islander Prosecutors Association

New York Chapter Board Member (2011– Present)

The National LGBT Bar Association

New York City Bar Association

Criminal Law Committee (2001 – 2004)

New York Women's Bar Association

U.S. Department of Justice Office of Victims of Crime Anti-Human Trafficking Task  
Force Advisory Committee (2009 – 2010)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 2003

District of Columbia, 1988

Illinois, 1986 (currently inactive status)

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit, 1999

United States District Court for the Eastern District of New York, 1998

There have been no lapses in membership.

**11. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Eastern District Association (1998 – Present)

Freedom Forth (2009 – Present)

Advisory Board Member

League of Women Voters of the City of New York (2003 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or previously discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With Monica Ryan, *Federal Prosecution of Human Traffickers*, in Lawyer's Manual on Human Trafficking, Supreme Court of the State of New York, Appellate Division, First Department, 2011. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a member of the U.S. Department of Justice Office of Victims of Crime Anti-Human Trafficking Task Force Advisory Committee from 2009 to 2010, I provided input and review for the Anti-Human Trafficking Task Force Strategy and Operations e-Guide. Copy supplied.

I was a member of the Criminal Justice Act Felony I Appointment Committee, which issued a report proposing criteria for appointment of attorneys to handle Felony I cases. I have been unable to obtain a copy of the report, but press coverage is supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my recollection, I have not issued or provided any testimony, official statement or communication relating to a matter of public policy or legal interpretation, either directly or indirectly, to a public body or official.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

June 18, 2012: Panelist, Symposium on Human Trafficking, hosted by Cadwalader, Wickersham & Taft, LLP, New York, New York. Powerpoint presentation supplied.

June 11, 2012: Keynote Speaker, "How to Conduct an Interview of a Sex Trafficking Victim," as part of a training conference, "Investigating & Prosecuting Sex Trafficking: A Collaborative Approach," hosted by the New York District Attorney's Office, New York, New York. Copy of notes supplied.

May 11, 2012: Acceptance Speech for Prosecutor of the Year Award at the Society of Asian Federal Officers' 21st Annual Awards and Scholarship Banquet, New York, New York. Copy of notes supplied.

April 26, 2012: Keynote Speaker, Third Annual Friendship Dinner, hosted by the Turkish Cultural Center, Staten Island, New York. I spoke on *United States v. Nicoletti*, 09 CR 002 (CBA), a federal hate crimes prosecution. I have no notes, transcript or recording. The address of the Turkish Cultural Center is 560 Lexington Avenue, 16th Floor, New York, New York 10022.

April 18, 2012: Speaker, "The First Step is Awareness – Stopping Sex Trafficking in New York City," hosted by The New York Women's Bar Association Foundation, Inc. and The New York Women's Bar Association, New York, New York. Powerpoint supplied.

April 2011 and April 2012: Cardozo School of Law, Intensive Trial Advocacy Training. Instructor for Cardozo School of Law's Intensive Trial Advocacy Program and presenter for the closing argument demonstration, New York, New York. Notes of closing argument demonstration supplied.

March 21, 2012: Panelist, "Identifying Victims of Trafficking/Trauma Informed Forensic Interviewing Skills," Freedom Network Tenth Annual Conference, New York, New York. Copy of notes supplied.

2011 and 2012: Guest lecturer, New York University School of Law, Human Trafficking Course, New York University School, New York, New York. Powerpoint presentation supplied.

October 21, 2011: Panelist, Federal-State Partners, National Association of Attorneys General Eastern Region Meeting, New York, New York. I spoke on partnerships between federal and state authorities to combat human trafficking. I have no notes, transcript, or recording. The address of the National Association of Attorneys General is 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

July 25, 2011: Speaker, Federal Human Trafficking Laws, New York City Immigration Judge Conference, New York, New York. Powerpoint presentation supplied.

June 6, 2011: Panelist, "One Community: How Government Agencies and Community-Based Organizations Can Work Together to Reduce Bias Incidents and Hate Crimes Based upon Race and National Origin," The Civil Rights Roundtable, hosted by multiple federal and state agencies, New York, New York. Copy of notes supplied.

May 11, 2011: Speaker, "Making a Difference: Women Who Care," The United Nations Association of New York Spring Luncheon 2011, New York, New York. Copy of notes supplied.

April 23, 2011: Speaker, Human Trafficking, National Organization of Black Law Enforcement Executives Region One Annual Meeting and Training, New York, New York. Powerpoint presentation supplied.

April 5, 2011: Panelist, "Emerging Concerns about Violence Against Women: Prostitution and Trafficking," as part of "Taking Stock: A Symposium Celebrating the 25th Anniversary of the New York State Judicial Committee on Women in the Courts Panel," hosted by the New York State Judicial Committee on Women in the Courts and the New York University Review of Law and Social Change, New York, New York. Copy of notes supplied.

March 24, 2011: Panelist, "Building Strong Cases for Prosecution," United States Department of Justice Office of Victims of Crime/Bureau of Justice Affairs Northeastern Regional Anti-Trafficking Task Force Training Forum, Hartford, Connecticut. Powerpoint presentation supplied.

March 9, 2011: Panelist, "Investigative Techniques/Anatomy of a Case," and Presenter for the Wellstone Award, Freedom Network Human Trafficking Conference, Washington, D.C. Powerpoint presentation for the panel supplied.

February 28, 2011: Panelist, Career Panel, Columbia Law School, New York, New York. I discussed legal careers, including public service and government employment. I have no notes, transcript, or recording. The address of Columbia Law School is 435 West 116th Street, New York, New York 10027.

January 29, 2011: Panelist, "Justice Deferred: The Stories of Vincent Chin and Robert Wone," 10th Annual Penn Asian Pacific American Law Students Association Conference, at the University of Pennsylvania Law School, Philadelphia, Pennsylvania. I spoke on the impact of the Vincent Chin killing on Asian-American activism and parallels between the killings of Vincent Chin in 1982 and Robert Wone in 2006. I have no notes, transcripts or recording. The

address of the University of Pennsylvania Law School is 3400 Chestnut Street, Philadelphia, Pennsylvania 19104.

January 26, 2011: Panelist, Panel Discussion on Sex Trafficking, hosted by New York University Women of Color Collective, New York University Law School, New York, New York. Powerpoint presentation and NYU Law coverage supplied.

January 17 - 20, 2011: Team Leader and Trainer, Workshop on Combating Trafficking in Persons, sponsored by the United States Department of State and United States Department of Justice, in Belize City, Belize. Powerpoint presentations supplied.

December 2, 2010: Panelist, "Stop Human Trafficking," hosted by the Partnership for the Eradication of Human Trafficking, a Project of the United Nations Association's Young Professionals for International Cooperation of Southern New York, at John Jay College, New York, New York. I discussed federal investigation and prosecution of human trafficking crimes and victim assistance and advocacy. I have no notes, transcript, or recording. The current address for the Partnership for the Eradication of Human Trafficking is unknown.

January 2010 - December 2010: Trainer, Human Trafficking, New York City Police Department, New York, New York. Powerpoint presentation supplied.

November 22, 2010: Panelist, Panel Discussion on Human Trafficking, hosted by a group of student organizations, Columbia Law School, New York, New York. I discussed federal investigation and prosecution of human trafficking crimes, and victim assistance and advocacy. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

July 15, 2010: Speaker, Port Richmond Community Forum on Impact of Hate Crimes, El Centro del Immigrante and Project Hospitality, Staten Island, New York. I explained the federal hate crimes statutes and answered related questions from the audience. I have no notes, transcript, or recording. The address of El Centro del Immigrante is 1546 Castleton Avenue, Staten Island, New York 10302. The address of Project Hospitality is 100 Park Avenue, Staten Island, New York 10302.

May 4, 2010: Panelist, Human Trafficking Panel, International Human Rights Committee of the New York City Bar Association, New York, New York. I discussed the investigation and prosecution of human trafficking crimes, victim assistance and possible state legislative proposals relating to human trafficking. I have no notes, transcript, or recording. The address for the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

March 17, 2010: Acceptance Speech, Wellstone Award, given at the 2010 Freedom Network Conference, Washington, D.C. Copy of notes supplied.

March 9, 2010: Panelist, "Human Trafficking and Human Smuggling: Criminal Prosecutions and Victim Services," Association of Certified Anti-Money Laundering Specialists (ACAMS), New York Chapter, New York, New York. Powerpoint presentation supplied.

September 24, 2009: Panelist, Panel Discussion on Human Trafficking, New York City Family Justice Center. Powerpoint presentation supplied.

September 23, 2009: Speaker, Showing of *Fatal Promises* Documentary, New York, New York. I answered questions about human trafficking after the film. I have no notes, transcript, or recording. The sponsor, Freedom Week, does not have a physical address.

September 14 -16, 2009: Trainer, Human Trafficking Training Program, sponsored by the United States Department of Justice and the Irkutsk Procuracy Training Institute, in Irkutsk, Russia. Powerpoint presentations supplied.

June 10, 2009: Speaker, Human Trafficking Investigation and Prosecution, United States Department of Labor Training Conference, Long Branch, New Jersey. Powerpoint presentation supplied.

May 5, 2009: Faculty Member for Continuing Legal Education program, "Human Trafficking Laws: An Analysis of the Current Laws," New York County Lawyers Association, New York, New York. I spoke on the Trafficking Victims Protection Reauthorization Act (TVPRA) and other federal and state laws that can be used to prosecute human traffickers. I have no notes, transcript, or recording. The address of the New York County Lawyers' Association is 14 Vesey Street, New York, New York 10007.

February 21, 2009: Panelist, "Evolving Understandings of Hate Crimes Against Asian and Middle-Eastern Americans in Pre- and Post-9/11 America: Economic Motivations and the Myth of the 'Perpetual Foreigner,'" 2009 Rebellious Lawyering Conference, Yale Law School, New Haven, Connecticut. I spoke about comparisons of the incidence and nature of hate crimes directed at Arabs, Muslims and Sikhs, and the related responses of government, law enforcement and the community before and after September 11. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

December 8, 2008: Panelist, Panel Discussion on Slavery, Universal Declaration of Human Rights 60th Anniversary Celebration, at the Christian Embassy, New York, New York. I spoke about human trafficking as a form of "modern day slavery" and the investigation and prosecution of human trafficking crimes. I

have no notes, transcript, or recording. The address for the Christian Embassy is 144 East 44th Street, New York, New York 10017.

April 26, 2008: Speaker, Human Trafficking, Chelsea Reform Democratic Club, at the Hudson Guild, New York, New York. I spoke on human trafficking and federal prosecution. I have no notes, transcript, or recording. The address of the Chelsea Reform Democratic Club is P.O. Box 1120, Old Chelsea Station, New York, New York 10113.

2008: Columbia Law School Federal Appellate Externship Course, guest lecturer, New York, New York. I spoke about oral argument and advocacy. I have no notes, transcript, or recording. The address of Columbia Law School is 435 West 116th Street, New York, New York 10027.

December 17, 2007: Speaker, Human Trafficking Training, New York City Mayor's Office of the Criminal Justice Coordinator and the Division of Criminal Justice Services, at the Office of the Medical Examiner, New York, New York. I spoke on federal human trafficking law. I have no notes, transcript, or recording. The address of the New York City Mayor's Office of the Criminal Justice Coordinator is One Centre Street, Room 1012N, New York, New York 10007.

December 3, 2007: Speaker, "Contemporary Slavery and Human Trafficking," Social Action Committee Open Meeting, 92nd Street Y, New York, New York. I spoke on human trafficking and federal trafficking prosecution. I have no notes, transcript, or recording. The address of the 92nd Street Y is 1395 Lexington Avenue, New York, New York 10128.

October 17, 2007: Speaker, "Teen Prostitutes: Victims or Defendants?," New York City Bar Association, New York, New York. Audio recording supplied.

September 26, 2007: Speaker, Human Trafficking Workshop, Garden of Hope, Flushing, New York. I spoke about human trafficking investigation and prosecution. I have no notes, transcript, or recording. The address of Garden of Hope is P.O. Box 520048, Flushing, New York 11352.

August 29, 2007: Panelist, Panel Discussion on Human Trafficking, Korean Americans Against Trafficking Conference, sponsored by New York Asian Women's Center, Queens, New York. I spoke on federal and state prosecution of human trafficking crimes and patterns of trafficking activity in and around New York City. I have no notes, transcript, or recording. The address of the New York Asian Women's Center is 39 Bowery, P.O. Box 375, New York, New York 10002.

June 14, 2007: Speaker, "The Intersection Between Human Trafficking and Domestic Violence," New York City Family Justice Center, Brooklyn, New York. I spoke about the federal anti-trafficking law and governmental response to



trafficking. I have no notes, transcript, or recording. The address of the New York City Family Justice Center is 350 Jay Street, Brooklyn, New York 11201.

May 30, 2007: Panelist, "Anatomy of a Prosecution: Labor Trafficking, Sex Trafficking, Single and Multiple Victim Cases," as part of the Basic Human Trafficking Seminar, hosted by the United States Department of Justice Office of Legal Education and the Executive Office for United States Attorneys, at the National Advocacy Center, Columbia, South Carolina. I discussed federal human trafficking prosecution. I have no notes, transcript, or recording. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 15, 2007: Speaker, "Human Trafficking - The Tragedy of Modern Day Slavery," United Jewish Appeal Federation of New York, Manhattan Women's Campaign, New York, New York. I spoke about human trafficking and federal trafficking prosecution. I have no notes, transcript, or recording. The address of the United Jewish Appeal Federation of New York is 130 East 59th Street, New York, New York 10022.

April 29, 2007: Panelist, Human Trafficking Panel, National Council of Jewish Women, New York, New York. I discussed federal trafficking laws and prosecution. I have no notes, transcript, or recording. The address of the National Council of Jewish Women is 820 Second Avenue, New York, New York 10017.

April 15, 2007: Panelist, "Trafficking II Forum: Helping the Victims of Modern Day Slavery," American Association of University Women, New York City Branch House, New York, New York. I discussed federal human trafficking prosecution. I have no notes, transcript, or recording. The address of the American Association of University Women, New York City Branch House is 111 East 37th Street, New York, New York 10016.

February 15, 2007: Brief remarks upon receiving the Susan B. Anthony Award from the New York City National Organization for Women, New York, New York. I expressed my appreciation for the award and described a trafficking case that my office prosecuted. I have no notes, transcript, or recording. The address of NOW NYC is 150 West 28th Street, #304, New York, New York 10001.

January 31, 2007: Panelist, "International Human Trafficking: The Missing Links between Social Policy and Action," Columbia University Partnership for International Development, Columbia University School of Social Work, New York, New York. I discussed federal human trafficking prosecution. I have no notes, transcript, or recording. The address of the Columbia University School of Social Work is 1255 Amsterdam Avenue, New York, New York 10027.

January 18, 2007: Panelist, "Ending the Business of Human Trafficking," sponsored by the National Organization for Women – New York City, End Child Prostitution, Child Pornography & Trafficking of Children – USA, Girls

Education and Mentoring Services, Equality Now, the New York State Anti-Trafficking Coalition and the Coalition Against Trafficking in Women, New York, New York. I discussed human trafficking and a multi-disciplinary approach to combating trafficking. I have no notes, transcript, or recording. The address of the National Organization for Women – New York City is 150 West 28th Street, Suite 304, New York, New York 10001.

January 9, 2007: Speaker, “Multidisciplinary Training – Investigating and Prosecuting Human Trafficking,” New York City Mayor’s Office and New York City Police Department, New York, New York. Powerpoint presentation supplied.

October 9, 2006: Panelist, “Human Trafficking in New York State: Identifying, Assisting and Promoting the Wellness of Trafficking Survivors,” Center for the Study of Asian American Health at New York University Medical Center, New York University Institute for Community Health and Research, New York, New York. I discussed federal prosecution of human trafficking crimes and case examples involving Asian victims. I have no notes, transcript, or recording. The address of the New York University Institute for Community Health and Research is 550 First Avenue, New York, New York 10016.

October 4, 2006: Speaker, “Proactive Investigative Strategies,” United States Department of Justice National Conference, in New Orleans, Louisiana. I spoke about investigative techniques and strategies in human trafficking cases. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

April 24, 2006: Panelist, Federal Prosecution of Human Trafficking Cases in New York State, at Human Trafficking: New York State Responds Conference, hosted by the New York State Office of Temporary Disability Assistance and Bureau of Refugee and Immigration Affairs, Albany, New York. I discussed challenges in investigating and prosecuting human trafficking cases and the roles of federal and local law enforcement agencies and victim service providers in supporting effective prosecution. I have no notes, transcript, or recording. The address of the New York State Office of Temporary Disability Assistance is 40 North Pearl Street, Albany, New York 12243.

February 10, 2006: Panelist, Sex Trafficking in the Context of Post-National Labor Markets, hosted by the Women’s Studies Minor and the Sociology Club, St. Francis College Department of Sociology and Criminal Justice, Brooklyn, New York. I discussed federal sex trafficking prosecution. I have no notes, transcript, or recording. The address of the St. Francis College Department of Sociology and Criminal Justice is 180 Reinsert Street, Brooklyn, New York 11201.

November 15, 2005: Speaker, Sex Trafficking Training, Kings County District Attorney's Office, Brooklyn, New York. I spoke about federal human trafficking law. I have no notes, transcript, or recording. The address of the Kings County District Attorney's Office is 350 Jay Street, Brooklyn, New York 11201.

November 14, 2005: Panelist, "Children in Chains" Conference, hosted by Media 4 Humanity, at the Harvard Club, New York, New York. I discussed human trafficking and federal anti-trafficking enforcement. I have no notes, transcript, or recording, but press coverage is supplied. The address of Media 4 Humanity is 780 Madison Avenue, Suite 5D, New York, New York 10065.

October 4-6, 2005: Trainer, Trafficking in Persons Training Program, sponsored by the United States Department of Justice, the Federal Republic of Nigeria and the Republic of Togo, in Abuja, Nigeria. I spoke about investigating and prosecuting human trafficking cases. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

August 16-17, 2005: Trainer, Conference on Combating Trafficking in Persons, sponsored by the United States Department of Justice, the United States Department of State and the Republic of Azerbaijan, in Baku, Azerbaijan. Powerpoint presentation supplied.

July 20, 2005: Panelist, "What It's (Really) Like to Practice Law in New York City as a Woman," New York Women's Bar Association, New York, New York. I discussed career planning, gender discrimination, work-life balance, networking and mentoring. I have no notes, transcript, or recording. The address of the New York Women's Bar Association is 132 East 43rd Street, #716, New York, New York 10017.

July 13-16, 2005: Trainer, Training Program for Law Enforcement Officers in Taiwan, hosted by Taipei Women's Rescue Foundation, in Taipei, Taiwan. Powerpoint presentation supplied.

Since 2006 to the present, I have met with college interns from Media 4 Humanity, a non-profit organization "dedicated to the eradication of child slavery and exploitation," twice a year to talk and answer questions about my job as a federal prosecutor. I have no notes, transcript, or recording. The address of Media 4 Humanity is 780 Madison Avenue, Suite 5D, New York, New York 10065.

Mock Trial/Moot Court: Between approximately 2004 and 2011, I judged and provided training at several mock trial and oral advocacy exercises and competitions, including the National Asian Pacific American Bar Association Law Foundation's Thomas Tang Moot Court Competition, the New York

University Lawyering Program Oral Argument Exercise, and the New York City High School Mock Trial Competition.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Ben Yakas, *Mexican Man Pleads Guilty to Queens Sex Trafficking Ring*, GOTHAMIST, Mar. 3, 2012. Copy supplied.

Erica Pearson, *Guilty Plea from Thug in Mexico-to-N.Y.C. Sex Trafficking Ring*, DAILY NEWS, Mar. 2, 2012. Copy supplied.

Dana E. Sullivan, *From "Who's Milgram?" to AG*, N.J. LAWYER, June 18, 2007. Copy supplied.

July 16, 2005: I was interviewed by a Taiwanese television news reporter in Taipei, Taiwan about a human trafficking training I and others from the United States provided from July 13 to July 16, 2005 at the invitation of the Taipei Women's Rescue Foundation. I do not have a videotape of the news broadcast.

Susan Beck, *A Missed Opportunity*, THE RECORDER, June 7, 1996. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_
- i. Of these, approximately what percent were:
- |                       |         |
|-----------------------|---------|
| jury trials:          | _____ % |
| bench trials:         | _____ % |
| civil proceedings:    | _____ % |
| criminal proceedings: | _____ % |
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name

and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member and Volunteer, Chelsea Reform Democratic Club (2007 – 2009)  
 Volunteer, Lynn Kotler Campaign for New York City Civil Court (2009)  
 Volunteer, Michael Beys Campaign for New York City Council, District 2 (2005)  
 Volunteer, Paul Simon Presidential Campaign (1988)

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never served as a judicial clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1986 – 1989  
 Arnold & Porter

555 12th Street, N.W.  
Washington, D.C. 20004  
Associate (1986 – 1989)  
Legal Intern (1986)

1989 – 1991  
Asbill, Junkin, Myers & Buffone  
1615 New Hampshire Avenue, N.W.  
Washington, D.C. 20009  
Associate

1991 – 1998  
United States Department of Justice  
Civil Rights Division, Special Litigation Section  
601 D Street, N.W.  
Washington, D.C. 20530  
Senior Trial Attorney (1992 – 1998)  
Trial Attorney (1991 – 1992)

1998 – 2007  
United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
Chief, Civil Rights Section, Criminal Division (2006 – 2007)  
Deputy Chief, Public Integrity Section (2006 – 2007)  
Chief, Civil Rights Litigation (2003 – 2006)  
Violent Crimes and Terrorism Section (1999 – 2003)  
General Crimes Section (1998 – 1999)  
Assistant United States Attorney (1998 – 2007)

2008  
New York State Division of Human Rights  
One Fordham Plaza, Fourth Floor  
Bronx, New York 10458  
Deputy Commissioner for Enforcement

2008 – Present  
United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
Chief, Civil Rights Section, Criminal Division (2008 – Present)  
Assistant United States Attorney (2008 – Present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or an arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I started the practice of law in September 1986 as an associate at Arnold & Porter, a large corporate law firm. There, I specialized in civil litigation, working on an array of matters, generally representing large corporate clients. Although primarily a litigator, I also worked extensively on various contract and administrative matters.

In July 1989, I joined Asbill, Junkin, Myers & Buffone, a boutique law firm comprised largely of former public defenders in order to develop expertise in criminal law. At the firm, I worked on criminal defense matters, as well a range of civil cases for individual and smaller corporate clients, including environmental tort litigation, trusts and estates, and civil RICO litigation.

In March 1991, I joined the Special Litigation Section of the Civil Rights Division at the United States Department of Justice. As a Trial Attorney and later a Senior Trial Attorney in that section, I investigated and litigated institutional reform cases, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to protect the rights of individuals confined to state and local facilities, such as nursing homes, facilities for the mentally ill and developmentally disabled, prisons and juvenile detention centers.

In September 1998, I became an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Eastern District of New York. After a year in the Office's General Crimes Section, I became a member of the Violent Criminal Enterprises Section (now called the National Security and Cybercrime Section), where I prosecuted gang cases involving drug trafficking, gun crimes and violence, and also one of the first post-September 11 terrorist financing prosecutions.

In August 2003, I was promoted to Chief of the Office's Civil Rights Litigation Unit, which was responsible for both civil and criminal civil rights matters. On the civil side, I supervised and worked on cases involving education, housing, disability, employment and voting rights. On the criminal side, I supervised and worked on hate crimes, color of law offenses (e.g., police brutality and official misconduct) and human trafficking cases.



In July 2006, the United States Attorney's Office decided to divide responsibility for civil rights matters between the Civil and Criminal Divisions, and to merge the criminal Civil Rights Section with the Public Integrity Section. At that time, I became Chief of the Civil Rights Section and also Deputy of the Public Integrity Section in the Criminal Division. After this change, my practice became more focused on criminal civil rights matters, and at the same time, expanded to include cases involving government fraud, theft and corruption, bribery and professional misconduct. In August 2008, upon my return to the United States Attorney's Office after serving briefly as a state agency official, the United States Attorney created a freestanding criminal Civil Rights Section, and appointed me as its Chief, which is my present position. Although I am currently the only attorney in the unit, I assign and supervise civil rights cases throughout the Office's Criminal Division. In addition, during my tenure at the United States Attorney's Office, I have argued numerous appeals in the United States Court of Appeals for the Second Circuit.

Finally, between January 2008 and April 2008, I served as the Deputy Commissioner for Enforcement of the New York State Division of Human Rights (DHR), appointed under former Governor Elliot Spitzer. During my brief tenure at the DHR, I helped oversee a large state administrative agency. My responsibilities included the direct supervision of a 25-person Enforcement Unit that litigated a high volume of cases both in the DHR's administrative courts and New York State Supreme Court, as well as the pursuit of DHR-initiated administrative actions to redress systematic patterns of discrimination by private and public sector entities.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an associate at Arnold & Porter, I worked primarily on civil and administrative litigation and contract matters for large corporations. As an associate at Asbill, Junkin Myers and Buffone, I worked on civil litigation for small businesses and individuals, and helped represent several individuals in criminal matters.

At the United States Department of Justice, Civil Rights Division, Special Litigation Section, I represented the United States in pursuing investigations and civil lawsuits to enforce the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), among other federal statutes.

As the Deputy Commissioner for Enforcement of the New York State Division of Human Rights, I was an official in a New York State agency.

I oversaw the Division's representation of private complainants in administrative and State court proceedings to enforce the State's human rights laws. I also represented the State in pursuing Division-initiated actions to redress systemic patterns of discrimination by private and public sector entities.

As an Assistant United States Attorney and supervisor in the U.S. Attorney's Office, I represent the United States in criminal prosecutions. During my tenure at the U.S. Attorney's Office, I have investigated and prosecuted a wide range of cases involving terrorism, violent crime and narcotics offenses. I have also civilly litigated and supervised the civil litigation of civil rights matters in the areas of housing, employment, disability rights, education and CRIPA. My current legal practice involves almost exclusively criminal civil rights investigation and prosecution, which includes human trafficking, color of law (*e.g.*, police brutality and official misconduct) and hate crime matters. I also participate regularly as a speaker, trainer and panelist in law enforcement and community conferences, trainings and workshops relating to civil rights and human trafficking.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The vast majority of my practice has been in litigation. The first half of my legal career, in private practice and at the Department of Justice, was focused primarily on civil litigation. During that time, I handled all aspects of civil litigation, including preparing and answering complaints, drafting and responding to written discovery, taking and defending depositions, co-counseling a bench trial and preparing and arguing an appeal before the Fourth Circuit. Initially, I appeared in court on an occasional basis, but these appearances became more frequent during my final few years at the Department of Justice.

Since joining the United States Attorney's Office in the Eastern District of New York in 1998, I have focused almost exclusively on criminal prosecution. Prior to becoming a supervisor in 2003, I appeared in court on an almost daily basis. For several years thereafter, I was in court numerous times each week. Currently, I appear in court at least once a week.

- i. Indicate the percentage of your practice in:
- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 94% |
| 2. state courts of record:  | 4%  |
| 3. other courts:            | 1%  |
| 4. administrative agencies: | 1%  |

ii. Indicate the percentage of your practice in:

1. civil proceedings: 40%
2. criminal proceedings: 60%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 11 criminal cases to verdict and one civil case to judgment. In the criminal cases, I was sole counsel for two cases, and the lead prosecutor for six cases. I was the second-most senior member of a three-person trial team in one case and the second seat (junior) for two cases. In the civil case, I was co-counsel for a bench trial.

i. What percentage of these trials were:

1. jury: 92%
2. non-jury: 8%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the United States Supreme Court. However, one of my cases, *United States v. Marcus*, 130 S. Ct. 2159 (2010), was successfully argued by the United States Department of Justice Solicitor General's Office before the Supreme Court, and I reviewed and provided input on the government's Petition for a Writ of Certiorari, Brief for the United States, and Reply Brief for the United States. See 2009 WL 1179321, 2009 WL 4617132, 2010 WL 604632.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Al-Moayad, et al.*, 03 CR 1322 (SJ)

This was a terrorist financing prosecution of a well-known Yemeni cleric, Al-Moayad, and his assistant, Zayed. In March 2005, after a six-week trial, both defendants were convicted by a jury of conspiring to provide material support to Hamas and Al Qaeda, and attempting to provide material support to Hamas. Al-Moayad was also convicted of attempting to provide material support to Al Qaeda and providing material support to Hamas. Al-Moayad was sentenced to 75 years' incarceration and Zayed was sentenced to 45 years. However, the defendants' convictions and sentences were overturned and a new trial was granted by the Second Circuit Court of Appeals in October 2008 on the basis of various evidentiary rulings by the district court. The defendants later pled guilty to conspiring to provide material support to Hamas.

I worked on this case from its inception in November 2001 to its conclusion in August 2009. As the sole prosecutor initially assigned to case, I worked closely with the FBI on the investigation, which included the planning and supervision of a confidential informant's evidence-gathering missions to Yemen. I prepared the lengthy arrest and extradition pleadings. After the defendants' extradition to the United States, I oversaw the voluminous discovery production and managed the bulk of the ongoing investigation and evidence-gathering. I also prepared numerous pre-trial motions to address complex issues relating to the admission of evidence from unusual sources, such as an Al Qaeda training camp form, which could not be admitted or authenticated through traditional means.

Between February and March 2005, I tried this case with my colleagues, Kelly Moore and Jeffrey Knox. I presented the government's evidence relating to the defendants' knowledge of Hamas's and Al Qaeda's terrorist activities, which included the testimony of one of the "Lackawanna Six" defendants about an Al Qaeda training camp and the testimony of a victim of a Hamas suicide bus bombing in Tel Aviv. I also prepared and delivered a three-hour closing for the government.

Mr. Knox and I handled the appeal, working with our Appeals Division, and jointly prepared the government's brief and argued before the Second Circuit Court of Appeals. I also worked with Mr. Knox and our Appeals Division on the government's petition for rehearing *en banc*. Following the denial of that petition, we negotiated a plea agreement with the defendants pursuant to which they pled guilty to conspiring to provide material support to Hamas. In 2005, my colleagues and I received the Department of Justice's John Marshall Award for Trial of Litigation in recognition of the investigation and prosecution of this case.

Courts and Judges:

The Honorable Sterling Johnson, Jr. (Trial)  
The Honorable Dora L. Irizarry (Post-Remand)  
United States District Court for the Eastern District of New York

The Honorable Joseph P. McLaughlin  
The Honorable Barrington D. Parker  
The Honorable Richard C. Wesley  
United States Court of Appeals for the Second Circuit

Co-Counsel:

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Morgan, Lewis & Bockius  
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Jeffrey H. Knox (former AUSA)  
United States Department of Justice  
Criminal Division, Fraud Section  
1400 New York Avenue, N.W.  
Washington, D.C. 20534  
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2. *United States v. Elfgeeh, et al.*, 03 CR 133 (SJ)

This case involved the prosecution of the operators of a \$20 million illegal money transmitting business that was run out of a convenience store in Brooklyn, New York. In September 2005, the defendants were convicted at trial of conspiring to operate and operating an illegal money transmitting business. The lead defendant was also convicted of structuring, which is the execution of financial transactions, such as bank deposits, in a certain pattern to avoid federal reporting requirements. The lead defendant was sentenced to 188 months' incarceration, and the other defendant received a sentence of 51 months. Forfeiture of over \$22 million and a fine of \$1.25 million against the lead defendant and \$500,000 against the other defendant were also ordered.

In May 2008, the United States Court of Appeals for the Second Circuit affirmed the defendants' convictions, but remanded the case for resentencing with regard to the amount of the fine and the application of an obstruction of justice enhancement to the second defendant. *United States v. Elfgeeh, et al.*, 515 F.3d 100 (2d Cir. 2008). In October 2008, the district court re-imposed the original sentence as to both defendants, but with no fines.

I worked on this matter for its entire duration, and was lead counsel for the majority of the case and sole counsel after May 2009. I oversaw the initial investigation, drafted numerous pre-trial submissions and participated in a contentious suppression hearing. I tried the case with my colleague, Jeffrey Knox. At trial, in addition to presenting the testimony of several witnesses, including an expert on "Black Money Operations," I cross-examined Abad Elfgeeh, delivered the government's opening statement and argued the rebuttal. Mr. Knox and I worked together on the defendants' sentencings and appeals. I thereafter handled the resentencings and the protracted *habeas* proceedings, which included extensive briefing and a two-day evidentiary hearing. *Elfgeeh v. United States*, 09 CV 2015 (SJ). Working with my

office's Appeals Division. I also drafted the government's appellate brief relating to the *habeas* proceedings and successfully argued the appeal before the Second Circuit. *See ElFgeeh v. United States*, 2012 WL 1861717 (2d Cir. May 23, 2012).

Courts and Judges:

The Honorable Sterling Johnson, Jr.  
United States District Court for the Eastern District of New York

The Honorable Amalya L. Kears  
The Honorable Robert D. Sack  
The Honorable Richard Mills (sitting by designation)  
United States Court of Appeals for the Second Circuit

Co-Counsel:

Jeffrey H. Knox (former AUSA)  
United States Department of Justice  
Criminal Division, Fraud Section  
1400 New York Avenue, N.W.  
Washington, D.C. 20534  
(202) 616-2634

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Morgan, Lewis & Bockius  
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New York, New York 10176  
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Arthur S. Friedman, Esq.  
 275 Madison Avenue  
 New York, New York 10016  
 (212) 986-1144

3. *United States v. Carreto, et al.*, 04 CR 140 (FB)

This was a sex trafficking prosecution of an extensive Mexican trafficking network that was comprised mostly of members of the Carreto family. Between 1991 and 2004, the Carreto traffickers forced dozens of Mexican women and girls into prostitution in Mexico and the United States. In November 2004, six defendants, including two who were located in Mexico, were charged in a 27-count superseding indictment with sex trafficking, forced labor, Mann Act violations (*i.e.*, the foreign and interstate transportation of women for prostitution) and immigration offenses. In April 2005, the defendants in the United States pled guilty to all charges in the indictment. In April 2006, the two lead defendants, who are brothers, were each sentenced to a term of 50 years' incarceration. A third defendant received a 25-year sentence. In January 2007, the mother of the lead defendants and a supervisor of the trafficking organization, was extradited from Mexico to the United States. She later pled guilty to a sex trafficking conspiracy, and in November 2009, was sentenced to a term of 10 years' incarceration. The defendants' convictions and sentences were affirmed on appeal by the Second Circuit. *United States v. Carreto*, 583 F.3d 152 (2d Cir. 2009).

I initiated this investigation and worked closely with Department of Homeland Security (DHS) agents to locate the traffickers and victims in January 2004. Former Department of Justice attorney Anne Milgram and I spent weeks interviewing victims to determine that they had been trafficked by members of the Carreto family through physical and sexual abuse, threats and coercion and to obtain details about the trafficking conduct. We also traveled with DHS agents to Mexico, where we met with Mexican prosecutors and interviewed other victims of the Carreto organization and their family members. Although I stopped working directly on the *Carreto* prosecution around June 2004, I supervised the case through its resolution at the trial and appellate levels. In January 2010, I re-assumed direct responsibility for the case and successfully handled the *habeas* litigation relating to one of the lead defendants. *Carreto v. United States*, 10 CV 5630 (FB), decision filed October 19, 2011. In 2006, the entire *Carreto* team received the Director's Award for Superior Performance by a Litigative Team from the United States Department of Justice in recognition of the investigation and prosecution of this case.



Courts and Judges:

The Honorable Frederic Block  
United States District Court for the Eastern District of New York

The Honorable Barrington D. Parker  
The Honorable Debra Ann Livingston  
The Honorable Denny Chin (sitting by designation)  
United States Court of Appeals for the Second Circuit

Co-Counsel:

Anne Milgram, Esq. (former Attorney General of New Jersey and former  
DOJ Senior Trial Attorney)  
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Center on the Administration of Criminal Law  
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Criminal Division Office of International Affairs  
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Chief Assistant District Attorney  
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New York, New York 10006  
(212) 748-1636

4. *United States v. Nicoletti, et al.*, 09 CR 002 (CBA)  
*United States v. Garaventa*, 08 CR 897 (CBA)

This was a hate crime prosecution of four young men from Staten Island who, on the night of the 2008 presidential election, sought to attack African Americans in retaliation for Barack Obama's election victory. During their rampage, the defendants assaulted two African-American men and one white man, whom the defendants mistakenly thought was African-American. Three of the defendants pled guilty to engaging in a hate crime conspiracy. The fourth defendant, Nicoletti, who drove his car into the white victim, putting the victim into a coma for several weeks, pled guilty to three counts of hate crime assault. Nicoletti was sentenced to 108 months. The other three defendants received sentences between 55 and 70 months.

I was the lead prosecutor for the entire duration of the case. As part of the investigation, former Assistant United States Attorney Margo Brodie and I interviewed numerous witnesses, as well as three of the four defendants. I

also prepared multiple search warrants, charging instruments, internal memoranda, plea agreements and sentencing submissions. I am currently handling a *habeas* petition filed by one of the defendants. In 2009, we received an Excellence in Criminal Litigation award from the United States Attorney's Office for the Eastern District of New York in recognition of the investigation and prosecution of this case.

Court and Judge:  
The Honorable Carol B. Amon  
United States District Court for the Eastern District of New York

Co-Counsel:  
The Honorable Margo K. Brodie (former AUSA)  
United States District Judge  
United States District Court for the Eastern District of New York  
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5. *United States v. Sandino*, 10 CR 331 (VVP)

This was a color of law prosecution of a New York City Police Department detective who coerced sexual acts from female arrestees and relatives of arrestees. The defendant was charged with three misdemeanor counts of violating 18 U.S.C. § 242. In October 2010, the defendant pled guilty to two of the three

misdemeanor charges and, among other things, agreed to resign from the police department. In May 2010, he received the maximum sentence of two years. In July 2010, the defendant was ordered to pay restitution of \$1,350 to one of the victims to compensate her for the psychological treatment she received as a result of the defendant's misconduct.

I was the lead prosecutor for the entire duration of the case. I also devised and developed the government's theory of prosecution, applying the civil rights statute to this type of conduct, which to my knowledge, had not been done before. Assistant United States Attorney Licha Nyiando and I investigated and prosecuted this case, which involved interviews of the primary victim and the defendant, and the preparation of numerous pleadings and submissions to the court, as well as internal memoranda.

Court and Judge:  
The Honorable Victor V. Pohorelsky  
United States District Court for the Eastern District of New York

Co-Counsel:  
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United States Attorney's Office  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
(631) 715-7825

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Aaron J. Mysliwec, Esq.  
Law Offices of Joshua L. Dratel, P.C.  
Two Wall Street, Third Floor  
New York, New York 10005  
(212) 732-0707

6. *United States v. Marcus*, 05 CR 457 (ARR)

This was a sex trafficking prosecution of a Long Island man who, between 1999 and 2001, enslaved a young woman in a bondage/dominance and sadomachistic (BDSM) sexual relationship partially for commercial gain. Marcus was indicted on charges of forced labor, sex trafficking and obscenity. At trial, he was convicted of forced labor and sex trafficking. *United States v. Marcus*, 487 F. Supp. 2d 289 (E.D.N.Y. 2007) (denial of motion for judgment of acquittal and new trial). He was sentenced to 108 months' incarceration. In August 2008, the Second Circuit Court of Appeals overturned Marcus's convictions on *Ex Post Facto* grounds. *United States v. Marcus*, 538 F.3d 97 (2d Cir. 2008). In May 2010, the Supreme Court reversed the Second Circuit. *United States v. Marcus*, 130

S. Ct. 2159 (2010). In December 2010, the Second Circuit affirmed Marcus's forced labor conviction and remanded the case to the district court. *United States v. Marcus*, 628 F.3d 36 (2d Cir. 2010). In March 2012, Marcus was sentenced to eight years' incarceration.

The case was initially assigned to another Assistant United States Attorney, but I took over as lead counsel in October 2007 and remained lead counsel throughout the duration of the case, including the appellate proceedings and resentencing. Prior to trial, I prepared numerous pre-trial motions on an array of complex issues and participated in a protracted pre-trial hearing to qualify experts for trial.

I tried this case with former Department of Justice Trial Attorney Solette Magnelli. I presented the government's evidence with respect to the sex trafficking and forced labor crimes, cross-examined defense witnesses and delivered the government's closing and rebuttal arguments. Following Marcus's conviction, I handled the sentencing proceedings and the appeal.

Working with our Appeals Division and the Department of Justice Civil Rights Division, I prepared the request to the Department of Justice Solicitor General's Office for authorization to seek *en banc* review, and prepared the government's rehearing petition to the Second Circuit. With respect to the Supreme Court proceedings, I reviewed and provided input on the petition and brief prepared by the Solicitor General's Office.

Following the Supreme Court's remand of the case to the Second Circuit, I again briefed and argued the case before the Court of Appeals, with assistance from our Appeals Division. I also handled Marcus's resentencing in March 2012.

Courts and Judges:

The Honorable Allyne R. Ross  
United States District Court for the Eastern District of New York

The Honorable Chester J. Straub  
The Honorable Sonia M. Sotomayor  
The Honorable Richard C. Wesley  
United States Court of Appeals for the Second Circuit

The Honorable Chester J. Straub (on remand)  
The Honorable Guido Calabresi (on remand)  
The Honorable Richard C. Wesley (on remand)  
United States Court of Appeals for the Second Circuit

Co-Counsel:

Solette Magnelli, Esq. (former DOJ Trial Attorney)

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600 Army Navy Drive  
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(212) 586-4900

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Federal Defenders of New York  
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Brooklyn, New York 11201  
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7. *United States v. Salazar, et al.*, 09 CR 831 (JG)

This was a sex trafficking prosecution of a Mexican couple who brutally forced a 17-year-old girl from Mexico to work as a prostitute. In December 2009, the defendants were indicted, *inter alia*, on charges of sex trafficking conspiracy and sex trafficking with respect to the minor victim. In July 2010, both defendants pled guilty. The husband pled guilty to the entire indictment, and the wife pled guilty to a sex trafficking conspiracy. In May 2011, the husband was sentenced to 30 years' incarceration and the wife was sentenced to 68 months' incarceration. The husband's appeal is currently pending.

I was initially the lead prosecutor in this case and have supervised it throughout its duration. Assistant United States Attorney Michael Warren and I handled the initial investigation and the defendants' arrests and subsequent indictment. In addition, I dealt with the government's discovery production and was primarily responsible for responding to the defendants' suppression motions. Mr. Warren and I jointly prepared for, and presented witnesses, at the suppression hearing. At the hearing, I also cross-examined the husband, who was found not credible by the district court. I also assisted in negotiating plea agreements with the defendants, although the agreements were finalized by Mr. Warren and Assistant United States Attorney Carolyn Pokorny, who briefly worked on the case. Mr. Warren

and I handled the sentencing proceedings, which involved significant briefing and argument. I also presented the testimony of the victim at the sentencing hearing.

Court and Judge:  
The Honorable John Gleeson  
United States District Court for the Eastern District of New York

Co-Counsel:  
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8. *United States v. Anglin, et al.* 98 CR 1124 (ERK)

This was a prosecution of a robbery crew based in Brooklyn, New York that committed armed robberies at banks, gas stations, restaurants and other local businesses in the mid-1990s. In 1998, six defendants were indicted in this case in connection with the robbery crew's activities. Four defendants pled guilty. Two defendants, Anglin and McClure, went to trial in February 2000, charged with committing the robbery of a bank located

inside a hospital. McClure was an insider at the hospital who provided the robbery crew information about the bank's movement of money. Anglin was one of the armed robbers who carried out the crime. Both defendants were convicted at trial. Anglin was sentenced to 20 years' incarceration and McClure was sentenced to one year and a day. In March 2002, Anglin's conviction and sentence were affirmed. *United States v. Anglin*, 284 F.3d 407 (2d Cir. 2002). In January 2004, Anglin's *habeas* petition was denied.

I was lead counsel in this case. I handled the discovery and plea proceedings relating to the defendants who pled guilty. Assistant United States Attorney Marshall Miller and I tried the bank robbery case against Anglin and McClure. Prior to trial, I briefed various evidentiary issues that included preparing a lengthy Rule 404(b) motion. At the trial, I presented the testimony of the bank employees who had been held at gunpoint by the robbers and the testimony of the government's main cooperator, who was a member of the robbery crew. I also delivered the government's closing and rebuttal arguments. Following the convictions, I was primarily responsible for the defendants' sentencing proceedings. I also prepared the government's appellate brief and argued the appeal.

Courts and Judges:

The Honorable Edward R. Korman  
United States District Court for the Eastern District of New York.

The Honorable Guido Calabresi  
The Honorable Jose A. Cabranes  
The Honorable Carol B. Amon (sitting by designation)  
United States Court of Appeals for the Second Circuit

Co-Counsel:

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271 Cadman Plaza East  
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Defense Counsel:

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9. *United States v. Pimentel, et al.*, 99 CR 104 (SJ)

This was a murder prosecution of two gang members, Pimentel and Viruet. In March 2001, both defendants were convicted at trial of murder, murder conspiracy and firearms offenses. Both defendants were sentenced to life imprisonment. In October 2003, the Second Circuit Court of Appeals denied Pimentel's appeal. *United States v. Pimentel*, 346 F.3d 285 (2d Cir. 2003). In March 2005, Viruet's *habeas* petition was denied. *Viruet v. United States*, 2005 WL 820513 (E.D.N.Y. Mar. 21, 2005). In August 2007, Pimentel's *habeas* petition was denied. *Pimentel v. United States*, 2007 WL 2915152 (E.D.N.Y. Aug. 20, 2007).

I was the second seat for the trial of this case. I delivered the government's opening statement and presented the testimony of several cooperating defendants. I also cross-examined Viruet. I remained involved in the case after trial, and assisted in preparing post-trial submissions, the government's appellate brief and responses to the defendants' *habeas* petitions.

Courts and Judges:

The Honorable Sterling Johnson, Jr.  
United States District Court for the Eastern District of New York

The Honorable Roger J. Miner  
 The Honorable Jose A. Cabranes  
 The Honorable Christopher Droney (sitting by designation)  
 United States Court of Appeals for the Second Circuit

Co-Counsel:  
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Defense Counsel:  
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 233 Broadway, Suite 2707  
 New York, New York 10279  
 (212) 644-5200

Richard Jasper, Esq.  
 276 Fifth Avenue, Suite 501  
 New York, New York 10001  
 (212) 689-3858

10. *United States v. Soto*, 98 CR 845 (ERK)

This was a murder prosecution of a United States Customs and Border Patrol (CBP) Officer who, before becoming a CBP Officer, was a drug dealer who had murdered his drug supplier. In June 1999, the defendant was convicted at trial of drug trafficking and committing a drug-related homicide. In October 1999, he received a sentence of 292 months. The defendant's conviction and sentence were affirmed by summary order. *United States v. Soto*, 234 F.3d 1263 (2d Cir. 2000).

I was the second seat at trial in this case. I delivered the government's opening statement, presented the testimony of the case agent who had obtained the defendant's post-arrest confession, and cross-examined a CBP Officer offered by the defense as a character witness.

Court and Judge:  
 The Honorable Edward R. Korman  
 United States District Court for the Eastern District of New York

Co-Counsel:  
 Jill Feeney (former EDNY AUSA)  
 United States Attorney's Office for the Central District of California  
 312 North Spring Street

Los Angeles, California 90012  
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Defense Counsel:  
Jorge E. Santos, Esq.  
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Forest Hills, New York 11375  
(718) 263-4040

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

**Combatting Human Trafficking:** As an outgrowth of my work prosecuting human trafficking cases, I have participated extensively in providing training, giving presentations and lecturing on human trafficking and the prevention, investigation and prosecution of human trafficking crimes, both in the United States and abroad. Over the past six years, I have given presentations on human trafficking to hundreds of government officials, law enforcement officers, health care professionals, social service providers, corporate representatives, private attorneys, students and members of the community in the United States. I also represent the United States Attorney's Office for the Eastern District of New York as a leading member of the human trafficking task force in New York City. In addition, I have co-authored a chapter, *Federal Prosecution of Human Traffickers*, for the Lawyer's Manual on Human Trafficking, and I have guest lectured at the New York University Law School Human Trafficking course taught by Professor Anne Milgram, the former New Jersey Attorney General and a former Department of Justice attorney. I have also provided training on human trafficking to law enforcement officers and prosecutors in other countries, including Taiwan, Azerbaijan, Nigeria, Russia and Belize. In addition, I have met with dozens of visiting foreign delegations, hosted by the United States Department of State, to discuss human trafficking. These efforts, I believe, have contributed substantially to raising awareness about the scourge of human trafficking, galvanizing support for anti-trafficking legislation and community-based anti-trafficking efforts, and enhancing law enforcement's efforts to combat trafficking worldwide.

**Enforcement of the Civil Rights of Institutionalized Persons Act:** Between 1991 and 1998, as a Department of Justice Attorney in the Special Litigation Section of the Civil Rights Division, I pursued numerous investigations, under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, that did not result in litigation, but literally saved lives and improved the quality of life for individuals with developmental disabilities who resided in state and local facilities. As part of these investigations, I conducted numerous on-site inspections with experts in the fields of medicine, nursing,

physical and occupational therapy, and psychology to evaluate the care and treatment being provided to residents. I also prepared comprehensive and detailed reports regarding the government's findings, and negotiated settlements and consent decrees setting specific standards of care for residents, as well as enforcement mechanisms for these requirements. In the case of one facility, the Embreeville Center in Coatsville, Pennsylvania, I participated in the negotiation of a precedent-setting agreement with the State to close the facility and place the residents into individualized three- and four-person homes in the community.

**Community Outreach:** As a member of the Community Outreach Committee in the United States Attorney's Office for the Eastern District of New York, I frequently participate in outreach events, such as the Federal Bureau of Investigation's Muslim Youth Career Day and the Turkish Cultural Center's Friendship Dinner. In my capacity as a civil rights prosecutor, I also participate in community events relating to law enforcement issues, such as a 2010 hate crimes forum in Staten Island, New York, organized by the Department of Justice's Community Relations Services, in response to a surge in anti-Latino violence and crime in that area. As part of my human trafficking work, I have developed close working relationships with community organizations that provide support and advocacy services to victims of human trafficking, which has dramatically improved the collaboration between law enforcement and service providers, and has produced extraordinary successes in the prosecution of trafficking cases and the restoration of victims and their families.

I have not performed any lobbying activity.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

New York University School of Law – Eastern District of New York Prosecutions Clinic: In 2012, I was selected to be an adjunct professor of the New York University Law School and will begin co-teaching its Eastern District of New York Prosecutions Clinic in the fall of 2012. The course will cover criminal law and procedure, and discuss legal, ethical, practical and policy issues relating to criminal law and criminal prosecution. In addition, as part of the clinic, the students will work as interns for Assistant United States Attorneys in the Eastern District of New York. The syllabus for my course is not yet written.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am unaware of any deferred income or future benefits to which I am entitled.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Beginning in September 2012, I will be co-teaching, as an adjunct professor, the New York University School of Law's Eastern District of New York Prosecutions Clinic. I have a contract to teach this clinic for the 2012-2013 academic year, and hope to continue doing so thereafter.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I anticipate recusing myself in any civil or criminal matter that was investigated, prosecuted or litigated by me or any Assistant United States Attorney whom I supervised while at the United States Attorney's Office for the Eastern District of New York or the Department of Justice Civil Rights Division. I may also recuse myself from a civil or criminal matter being pursued by the United States Environmental Protection Agency, Region 2, which is where my partner works as an attorney. Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to the appearance of conflict, on a case by case basis and determine appropriate action with the advice of the parties and their counsel including recusal where necessary.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges, as well as consult with colleagues if necessary, and recuse myself where appropriate to avoid even the appearance of a conflict.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While employed at Arnold & Porter between 1986 and 1988, I participated in the *pro bono* representation of a death row inmate, Dennis Stockton, in Virginia, and a resident of St. Elizabeth's Hospital, a residential mental health facility in Washington, D.C. With respect to Stockton's case, I worked with another Arnold & Porter associate to stay Stockton's execution and initiate *habeas* proceedings to overturn his murder-for-hire conviction. Stockton's representation was taken over by other Arnold & Porter attorneys upon my departure from the firm in 1988. Stockton was executed in September 1995. I estimate that I devoted approximately 160 hours to this matter. With respect to the St. Elizabeth's resident, I represented her in connection with a class action deinstitutionalization lawsuit. My role was to determine whether she wanted to remain at the facility or move into community housing, and to advocate for her if she chose to move out of the facility. My client, who was elderly, had severe cognitive disabilities and had been institutionalized at a young age, chose to remain at the facility. I estimate that I devoted approximately 30 hours to this matter.

I am also a member of the Community Outreach Committee in the United States Attorney's Office for the Eastern District of New York. In that capacity, I participate in outreach events during non-working hours, such as the Federal Bureau of Investigation's Muslim Youth Career Day and the Turkish Cultural Center's Friendship Dinner. I have also participated, on a volunteer basis, in public forums and panel discussions on civil rights, hate crimes, Asian-American social and political issues, and career planning. I estimate that over the past ten years, I have devoted 200 or more hours to these activities.

In addition, as an outgrowth of my work prosecuting human trafficking cases, I participate regularly in *pro bono* activities in the community to raise awareness about human trafficking and provide training on the prevention, investigation and prosecution of human trafficking crimes. I have given presentations about human trafficking on a volunteer basis to hundreds of community members at over 20 public events. In addition, for the past several years, I have met with college interns from Media 4 Humanity, a non-profit organization "dedicated to the eradication of child slavery and exploitation," each semester to talk about my job as a federal prosecutor. I estimate that over the past six years, I have devoted 300 or more hours to these activities.

Finally, I teach and mentor students on a regular basis. In 2011 and 2012, I was an instructor for the Cardozo School of Law's Intensive Trial Advocacy Program. In addition to working with and providing feedback to Cardozo law students with respect to

their trial advocacy performance, I also gave the closing argument demonstration for the program. I devoted approximately 40 hours to participate in this program in 2011 and 2012. I have also judged and provided training at several mock trial and oral advocacy exercises and competitions, including the National Asian Pacific American Bar Association Law Foundation's Thomas Tang Moot Court Competition, the New York University Lawyering Program Oral Argument Exercise, and the New York City High School Mock Trial Competition. Between 2005 and 2011, I devoted approximately 50 hours to these activities.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a completed questionnaire to U.S. Senator Charles E. Schumer's judicial selection committee, which recommends candidates for the federal courts to the Senator, in March 2011. I was interviewed by that committee on May 23, 2011. I was interviewed by Senator Schumer on January 20, 2012. On June 7, 2012, I learned that Senator Schumer intended to send my name to the White House for consideration.

Since June 7, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On July 9, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On August 2, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Chen, Pamela K.	2. Court or Organization U.S. District Court for the Eastern District of New York	3. Date of Report 08/02/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 08/02/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 07/30/2012
7. Chambers or Office Address United States Attorney's Office for the Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)



NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1.

2.

3.

4.

5.

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)



NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1. 2012

New York University Law School; Clinical Professor for the Eastern District of New York Prosecution Clinic, Fall 2012 and Spring 2013

2.

3.



**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting	Date of Report
Chen, Pamela K.	08/02/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Exclude amounts not separately reportable for themselves.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.*
*(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 7

Name of Person Reporting Chen, Pamela K.	Date of Report 08/02/2012
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**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 7

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Chen, Pamela K.	08/02/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy., sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Vanguard 500 Index Fund	D	Dividend	L	T	Exempt				
2. Citibank cash accounts	A	Interest	L	T					
3. Brokerage Account #1									
4. - iShares MSCI EAFE Index Fund	A	Dividend	J	T					
5. - iShares Russell 2000 Index Fund	C	Dividend	J	T					
6. - iShares Morningstar Mid Core Index Fund	C	Dividend	J	T					
7. - SPDR S&P Midcap 400 ETF Trust	D	Dividend	K	T					
8. - SPDR S&P 500 ETF Trust	D	Distribution	K	T					
9. - Wisdom Tree Earnings 500 Fund	C	Dividend	K	T					
10. - Vanguard Intermediate-Term Tax-Exempt Fund	B	Dividend	K	T					
11. - Bristol Myers Squibb Co. common stock	C	Dividend	K	T					
12. - Citigroup common stock		None	K	T					
13. - Duke Energy Corp. common stock	B	Dividend	J	T					
14. - Frontier Communications Corp. common stock		None	J	T					
15. - Verizon common stock	D	Dividend	K	T					
16. - IRA #1									
17. - American Funds American Balanced C	A	Dividend	J	T					

4. Income Gift Codes (See Columns B) and D)	A - \$1,001 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$300,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$10,001 - \$100,000 P - \$1,000,001 - \$5,000,000 R - More than \$50,000,000	D - \$5,001 - \$15,000 I - More than \$5,000,000 M - \$100,001 - \$250,000 T - \$5,000,001 - \$25,000,000	E - \$15,001 - \$50,000
5. Value Codes (See Columns C) and D)	Q - Appraisal U - Book Value	R - Cost (Real Estate Only) V - Other	S - Assessed W - Estimated	T - Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 7

Name of Person Reporting	Date of Report
Chen, Pamela K.	08/31/2012

**VII. INVESTMENTS and TRUSTS** *(income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*
☐ **NONE** *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g., div., rent, or int.)	Value	Value	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value	Gain	Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Code 3 (Q-W)			Code 2 (J-P)	Code 1 (A-H)	
18. American Funds Capital World G4 C	A	Dividend	J	T					
19. American Funds American Mutual C	A	Dividend	J	T					
20.									
21.									
22.									
23.									
24.									
25.									

1. Income Item Codes: (See Columns B1 and D1)	A - \$1,000 or less	B - \$1,001 - \$2,000	C - \$2,001 - \$5,000	D - \$5,001 - \$15,000	E - \$15,001 - \$50,000
	F - \$50,001 - \$100,000	G - \$100,001 - \$1,000,000	H - \$1,000,001 - \$5,000,000	I - More than \$5,000,000	
2. Value Codes: (See Columns C1 and D3)	J - \$15,000 or less	K - \$15,001 - \$50,000	L - \$50,001 - \$100,000	M - \$100,001 - \$250,000	N - \$250,001 - \$500,000
	O - \$500,001 - \$1,000,000	P - \$1,000,001 - \$5,000,000	Q - More than \$5,000,000		
3. Value Method Codes: (See Column C2)	Q - Appraisal	R - Cost (Real Estate Only)	S - Assessment	T - Cash Market	
	U - Book Value	V - Other	W - Estimated		

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 7

Name of Person Reporting	Date of Report
Chen, Pamela K.	08/02/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

The teaching contract reported in Section II will not take effect until September 2012. As of the date of this report, I have not received any compensation pursuant to this contract or any other compensation from the New York University Law School. Should I be confirmed as a United States District Court Judge, I will withdraw from this contract, which requires that the teacher be an Assistant United States Attorney.

**FINANCIAL DISCLOSURE REPORT**

Page 7 of 7

Name of Person Reporting	Date of Report
Chen, Pamela K.	08/02/2012

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Pamela K. Chen**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		130	000	Notes payable to banks-secured			
U.S. Government securities - see schedule				Notes payable to banks-unsecured			
Listed securities - see schedule	1	420	708	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		264	975
Real estate owned - personal residence	1	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		35	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan	1	132	432				
				Total liabilities		264	975
				Net Worth	3	953	165
Total Assets	4	218	140	Total liabilities and net worth	4	218	140
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

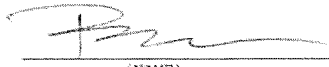
American Funds AMCAP Fund	\$ 143,263
American Funds American Balanced Fund	956
American Funds American Mutual Fund	926
American Funds Capital World Growth and Income Fund	675
American Funds EuroPacific Growth Fund	52,923
American Funds Income Fund of America	80,984
American Funds Investment Company of America	168
American Funds New Perspective Fund	56,589
American Funds SMALLCAP World Fund	11,919
Bank of America stock	2,932
Bristol Myers Squibb Co. stock	18,025
Citigroup stock	19,110
Columbia Acorn Fund	16,736
Cooper Industries PLC stock	109,080
Dreyfus 100% U.S. Treasury Money Market Fund	51,808
Dreyfus New York Tax Exempt Bond Fund	183,275
Dreyfus Worldwide Dollar Money Market Fund	1,246
Duke Energy Corp. stock	11,197
Frontier Communications Corp. stock	445
General Electric Co. stock	4,014
iShares MSCI EAFE Index Fund	10,074
iShares Russell 2000 Index Fund	11,898
iShares Morningstar Mid Core Index Fund	13,942
Janus Worldwide Fund	114,401
Janus Fund D Shares	98,122
Janus Global Technology Fund	27,599
Janus Twenty Fund	15,995
Johnson & Johnson stock	13,192
JP Morgan Chase stock	12,219
MFS Mid Cap Growth Fund	5,915
Pfizer stock	4,529
SPDR S&P 500 ETF	27,735
SPDR S&P Midcap 400 ETF	17,272
Travelers Companies Inc. stock	2,875
Vanguard 500 Index Fund	190,492
Vanguard Intermediate-Term Tax-Exempt Fund	46,577
Verizon Communications stock	22,450
WisdomTree Trust Earnings 500 Fund	19,150
Total Listed Securities	\$1,420,708



AFFIDAVIT

I, Pamela Ki Mai Chen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

08/06/12  
(DATE)

  
(NAME)

  
(NOTARY)

LINDA J. McNEILL  
Notary Public, State of New York  
No. 01MC6017505  
Qualified in Kings County  
Commission Expires 12/14/20 14

Senator SCHUMER. Thank you.  
Mr. Nunley.

**STATEMENT OF HON. TROY L. NUNLEY, NOMINEE TO BE U.S.  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALI-  
FORNIA**

Judge NUNLEY. Thank you. Senator Schumer, thank you for chairing this hearing. I would also like to thank Ranking Member Grassley for organizing this hearing. I would like to thank Senator Feinstein for her kind and generous words. And I would also like to thank the other Senators who are participating in today's hearing.

I would also like to thank President Barack Obama for nominating me for this position, and I would like to thank my fellow judges on the Sacramento County Superior Court.

There are several people here today that I would like to acknowledge and thank: first of all, my soul mate, my life partner, my best friend, my wife, Susan. I would also like to thank my mother, who has served as my primary source of information—of inspiration throughout my life. She certainly is the most important person of my young adulthood.

I would also like to—

Senator SCHUMER. Mr. Nunley, my mother tries to serve as my prime source of information.

[Laughter.]

Senator SCHUMER. You said it right. To this day.

Judge NUNLEY. I would also like to thank my brother-in-law, who is more brother than in-law. He has been very supportive of me throughout my career.

I would also like to acknowledge and thank several individuals who are not here today, including my mother-in-law and my father-in-law, Stan and Michelle Lawrence. I would also like to thank and appreciate my kids, my two daughters, my two princesses, who could not be here today. They are both starting new jobs, and they felt it was important to stay at work today throughout this process, but they are supportive. I imagine they are watching these proceedings, although with California time three hours behind, but I imagine they are trying to catch it somewhere.

I would also like to acknowledge my two sons, my 11-year-old son, Dominic, my 7-year-old son, Dylan, and if they are up watching this, they have an issue.

[Laughter.]

Judge NUNLEY. I would also like to thank my work family: my bailiff from the Sacramento County Sheriff's Department, Stacy Hill. I would also like to thank my court reporter, Kimberly Hayes. And I would also like to thank my court clerk, Deanna Morrison. They are certainly the most important people during the course of my day from eight o'clock until five o'clock.

Thank you for giving me this opportunity to acknowledge those individuals who are most important in my life. Thank you.

[The biographical information follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Troy Lynne Nunley

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of California

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Superior Court of the State of California  
County of Sacramento  
720 Ninth Street, Department 40  
Sacramento, California 95814

4. **Birthplace:** State year and place of birth.

1964; San Francisco, California

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1987 – 1990, University of California, Hastings College of the Law; J.D., 1990  
1982 – 1986, St. Mary's College of California; B.A., 1986

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2002 – Present  
Superior Court of California, County of Sacramento  
720 Ninth Street, Department 40  
Sacramento, California 95814  
Judge

2006 – Present  
 Lincoln Law School of Sacramento  
 3140 J Street  
 Sacramento, California 95816  
 Law School Professor – Corporations and Business Partnerships

1999 – 2002  
 California Department of Justice  
 Office of the Attorney General  
 1300 I Street  
 Sacramento, California 95814  
 Deputy Attorney General

1996 – 1999  
 Sacramento County District Attorney's Office  
 901 G Street  
 Sacramento, California 95814  
 Deputy District Attorney

1994 – 1996  
 Law Office of Troy L. Nunley  
 1032 East Fourteenth Street  
 San Leandro, California 94577  
 Sole Practitioner

Summer 1989; 1990 – 1994  
 Alameda County District Attorney's Office  
 1225 Fallon Street, Room 900  
 Oakland, California 94612  
 Deputy District Attorney (1991 – 1994)  
 Law Clerk (1990 – 1991)  
 Summer Law Clerk (1989)

1988 – 1989; 1989 – 1990  
 San Francisco County District Attorney's Office  
 850 Bryant Street, #322  
 San Francisco, California 94103  
 Law Clerk

1986 – 1987; 1988 – 1989  
 State Bar of California  
 180 Howard Street  
 San Francisco, California 94105  
 Law Clerk (1988 – 1989)  
 Public Information Clerk (1986 – 1987)

Other Affiliations (uncompensated unless otherwise noted):

2009 – Present

St. Patrick's Succeed Academy  
5945 Franklin Boulevard  
Sacramento, California 95424  
Board of Directors

2010 – Present

Natomas Pacific Pathways Preparatory Charter School  
3700 Del Paso Road  
Sacramento, California 95834  
Board of Directors

2004 – Present

MTI College  
5221 Madison Avenue  
Sacramento, California 95841  
Advisory Board Member, Paralegal Program (compensated)

2006 – 2010

St. Francis Elementary School Parent Club  
2500 K Street  
Sacramento, California 95816  
President

2000 – 2003

Woodland Gymnastics  
1460 Tanforan Avenue  
Woodland, California 95776  
Board of Directors

1999 – 2001

St. Francis Elementary School Board  
2500 K Street  
Sacramento, California 95816  
Vice-President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Judicial Excellence Award for Continued and Exemplary Service to the Community.  
California Black Lawyers Association (2010)

Judge of the Year, Sacramento Indigent Criminal Defense Panel (2009)

Difference Maker Award, Martin Luther King, Jr. Organizing Committee (2009)

Community Justice Award, Community Focused Court Planning Committee (2009)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Anthony M. Kennedy American Inn of Court at McGeorge School of Law, Inactive  
Emeritus Member (2001 – Present)

Sacramento County Mental Health Services Act Steering Committee (2009 – 2010)

Sacramento County Superior Court

Chair, New Courthouse Committee (2008)

Chair, Psychiatric Expert Sub-Committee (2004 – 2008)

Student Outreach Committee (2011 – Present)

Security Services Committee (2011 – Present)

Criminal Courts Committee (2007 – Present)

Juvenile Delinquency Committee (2008 – 2010)

Juvenile Dependency Committee (2008 – 2010)

Subordinate Judicial Officer Committee (2007 – 2008)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1991

There were no lapses in membership from the date of my admission to the date I was appointed as a judge in the State of California, in and for the County of Sacramento. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 2001  
 United States District Court for the Eastern District of California, 1994  
 California Supreme Court, 1991

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

C.K. McClatchy High School Law Academy  
 Advisory Committee (2011 – Present)

MTI College Paralegal Program  
 Board of Directors (2004 – Present)

Natomas Pacific Pathways Preparatory Charter High School  
 Board of Directors (2009 – Present)

North Natomas Little League Baseball, Manager/Coach (2008 – Present)

St. Francis Elementary School Board  
 Vice-President (1999 – 2001)

St. Francis Elementary School Discernment Committee (2010 – 2011)

St. Francis Elementary School Parent Club (1997 – 2011)  
 President (2006 – 2010)

St. Francis Junior Varsity Recreational Basketball Team, Coach (2000 – 2001)

St. Francis Junior Varsity Basketball Team, Coach (2001 – 2002)

St. Patrick's Succeed Academy Elementary School  
 Board of Directors (2010 – Present)

Woodland Gymnastics  
 Board of Directors (2000 – 2003)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or in the practical implementation of their membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have not written or edited any books, articles, reports, letters to the editor, editorial pieces or any other material published in print or on the Internet.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

*Progress Report to Parents and Parishioners*, Discernment Committee for St. Francis of Assisi Parish & Elementary School, Jan. 14, 2011. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not given any such testimony, official statements or other communications.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports



about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have frequently spoken at elementary schools and high schools as well as to other community organizations. I have attempted to compile as complete a list of my remarks as possible, but there may exist remarks that I have been unable to recall or identify.

March 2, 2012: Read Across America, Dr. Seuss Day, Glenwood Elementary School, Sacramento, California. I read several books and spoke to elementary school students about the importance of reading. I have no notes, transcript, or recording. Glenwood Elementary School is located at 201 Jessie Avenue, Sacramento, California 95838.

February 25, 2012: Annual Northern California African American Young Male Conference, Sacramento, California. I gave a speech alongside several police officers, probation officers and parole officers to a large group of at-risk juveniles on topics such as juvenile justice, overcoming adversity, avoiding gangs and making positive choices. I have no notes, transcript, or recording. The sponsor of the event, 100 Black Men of Sacramento, is located at 2251 Florin Road, Suite 140, Sacramento, California 95822.

September 29, 2011: Contract for Success, Kennedy High School, Sacramento, California. I spoke to high school juniors and seniors on the importance of setting and following through on goals. I have no notes, transcript, or recording. Kennedy High School is located at 6715 Gloria Drive, Sacramento, California 95831.

May 11, 2011: Career Day, Jackman Middle School, Sacramento, California. During the school's annual career day I spoke to a number of students about the path to becoming an attorney as well as the steps they could take to become a judge. I have no notes, transcript, or recording. Jackman Middle School is located at 7925 Kentwal Drive, Sacramento, California 95823.

May 7, 2011: Civitas Academy at Rio Americano High School fundraiser, Sacramento, California. I spoke to students and parents about the role of the judiciary in society and the right to vote. I have no notes, transcript, or recording. Rio Americano High School is located at 4540 American River Drive, Sacramento, California 95864.

October 2, 2010: My Future Starts with Me Conference, Friends-CARE and the California Department of Corrections & Rehabilitation, Sacramento, California. I participated in a discussion titled "Vision, Hope and Success." During several

break-out sessions Judge William Murray and I talked to a number of children of incarcerated parents. I have no notes, transcript, or recording. Friends-CARE is located at 5890 Newman Court, Sacramento, California 95819; California Department of Corrections & Rehabilitation is located at 1515 S Street, Sacramento, California 95814.

April 23, 2010: Judicial Excellence Award for Continued and Exemplary Service to the Community, Emeryville, California. I briefly thanked the organization for bestowing the award. I have no notes, transcript, or recording. The sponsor of the event, the California Association of Black Lawyers, is located at 20 Sunnyside Avenue, Suite A, #383, Mill Valley, California 94941.

March 27, 2010: Family Life Center of Sacramento and the Sacramento County District Attorney's Office, Sacramento, California. I was the keynote speaker for an audience of local ministers, law enforcement officers, citizens and juveniles. Remarks supplied.

February 27, 2010: Annual Northern California African American Young Male Conference, Sacramento, California. I gave a speech alongside several police officers, probation officers and parole officers to a large group of at-risk juveniles on topics such as juvenile justice, overcoming adversity, avoiding gangs and making positive choices. I have no notes, transcript, or recording. The address for the organizers is: 100 Black Men of Sacramento, 2251 Florin Road, Suite 140, Sacramento, California 95822.

February 10, 2010: Sacred Heart-Cathedral Vocation Day, San Francisco, California. I was the keynote speaker for an assembly of high school students, teachers and administrators. Remarks supplied.

February 2010: Kipp San Francisco Bay Academy Charter School, San Francisco, California. I was the keynote speaker for the school's Black History Month Celebration. Remarks supplied.

January 19, 2010: Martin Luther King, Jr. Week, University of California Davis School of Law, Davis, California. I gave remarks about the role of attorneys can have in mentorship programs and the path to becoming a judge. I have no notes, transcript, or recording, but press coverage is supplied. The address of the organizer is: 400 Mrak Hall Drive, Davis, California 95616.

December 2009: Sacramento County Indigent Criminal Defense Panel Judge of the Year, Sacramento, California. I thanked the local criminal defense attorneys for the award. Remarks supplied.

June 27, 2009: John F. Kennedy High School, Operation Protect and Defend, Sacramento, California. I talked to the students about the Japanese internment during World War II and the impact of the United States Supreme Court decision

in *Korematsu v. United States*. I spoke alongside a former California state deputy attorney general whose parents were both interned during World War II. I have no notes, transcript, or recording. John F. Kennedy High School is located at 6715 Gloria Drive, Sacramento, California 95831.

June 13, 2009: Mayor Kevin Johnson's Youth Empowerment Summit, Sacramento, California. I gave a speech alongside several police officers, probation officers and attorneys. I spoke to the assembly of parents, students and community members about juvenile justice and avoiding gangs. I have no notes, transcript, or recording. The address for Mayor Kevin Johnson is 915 I Street, 5th Floor, Sacramento, California 95814.

June 9, 2009: Sacramento County Job Corps Graduation, Sacramento, California. I was the keynote speaker for graduates of the Sacramento County Job Corps. Remarks supplied.

May 29, 2009: 5th Annual Reaching Resolution Community Showcase, California State University, Sacramento. I spoke to a conference of high school students on effective methods to resolve disputes without violence. I have no notes, transcript, or recording. California State University, Sacramento is located at 6000 J Street, Sacramento, California 95819.

March 28, 2009: Youth and the Law Forum, Sacramento County Superior Court Main Jail, Sacramento, California. I spoke to a large group of at-risk juveniles on juvenile justice, overcoming adversity, avoiding gangs and making positive choices. I have no notes, transcript, or recording. The sponsor of the event, 100 Black Men of Sacramento, is located at 2251 Florin Road, Suite 140, Sacramento, California 95822.

March 20, 2009: Balboa High School of San Francisco and Mission High School of San Francisco, Law Academy, Sacramento, California. I spoke to the students about my background and the judicial branch, explaining to them how judges preside over cases and conduct their daily judicial duties. I have no notes, transcript, or recording. The sponsor of the event, the Bar Association of San Francisco, is located at 301 Battery Street, San Francisco, California 94111.

March 2, 2009: Read Across America, Dr. Seuss Day, Northridge Elementary School, Sacramento, California. I read several books and spoke to elementary school students about the importance of reading. I have no notes, transcript, or recording. Northridge Elementary School is located at 5150 Cocoa Palm Way, Fair Oaks, California 95628.

February 28, 2009: Annual Northern California African American Young Male Conference, Sacramento, California. I gave a speech alongside several police officers, probation officers and parole officers to a large group of at-risk juveniles on topics such as juvenile justice, overcoming adversity, avoiding gangs and

making positive choices. I have no notes, transcript, or recording. The sponsor of the event, 100 Black Men of Sacramento, is located at 2251 Florin Road, Suite 140, Sacramento, California 95822.

August 14, 2008: Sacramento Racial Profiling Study Commission, Oak Park Community Center, Oak Park, California. I led a neighborhood meeting about a study on racial profiling at traffic stops released by the Racial Profiling Study Commission. I have no notes, transcript, or recording, but a staff report on the event is supplied. The Sacramento Racial Profiling Study Commission is located at 915 I Street, Sacramento, California 95814.

August 2008: St. Mary's College of California Keynote Address, Moraga, California. I was the keynote speaker to prospective students. Remarks supplied.

May 15, 2008: "Highest Office: Citizen" Forum, Center for Youth Citizenship, Sacramento, California. I participated in a panel discussion on accepting responsibility. Script supplied.

March 2008: Friends-CARE Keynote Speech, Sacramento, California. I was the keynote speaker at a community gathering of police chiefs, probation chiefs, politicians, judges, appellate judges, local ministers, the Catholic bishop and various community leaders. Remarks supplied.

January 11, 2008: Sutter Middle School, Sacramento, California. I gave a speech to a class of 8th grade students on serving the community and helping the disadvantaged. I also spoke to the students on the role of courts in society and how law has historically addressed some of the greatest issues in our society. I have no notes, transcripts, or recordings. Sutter Middle School is located at 3150 I Street, Sacramento, California 95816.

October 24, 2007: Hanna Boys Center, Sonoma, California. I spoke to an assembly of young boys about personal responsibility, setting goals and succeeding despite facing adversity. I have no notes, transcript, or recording. Hanna Boys Center is located at 17000 Arnold Drive, Sonoma, California 95476.

February 9, 2007: Sacred Heart-Cathedral Vocation Day, San Francisco, California. I was the keynote speaker for an assembly of high school students, teachers and administrators. Remarks supplied.

February 7, 2007: Sutter Middle School, Sacramento, California. I gave a speech to a class of 8th grade students on serving the community and helping the disadvantaged. I also spoke to the students on the role of courts in society and how law has historically addressed some of the greatest issues in our society. I have no notes, transcripts, or recordings. Sutter Middle School is located at 3150 I Street, Sacramento, California 95816.

May 21, 2006: Commencement Address for Lincoln Law School of Sacramento, Sacramento, California. I was the keynote speaker for the graduating law school class. Remarks supplied.

January 27, 2006: Sutter Middle School, Sacramento, California. I gave a speech to a class of 8th grade students on serving the community and helping the disadvantaged. I also spoke to the students on the role of courts in society and how law has historically addressed some of the greatest issues in our society. I have no notes, transcripts, or recordings. Sutter Middle School is located at 3150 I Street, Sacramento, California 95816.

Fall 2005: Remarks to graduates of drug treatment programs, Superior Court of California, Sacramento County, Department 8. I have no notes, transcript, or recording, but press coverage is supplied. The Sacramento County Superior Court, Department 8, is located at 720 Ninth Street, Sacramento, California 95814.

February 2004: Sacred Heart-Cathedral Vocation Day, San Francisco, California. I was the keynote speaker for an assembly of high school students, teachers and administrators. Remarks supplied.

October 18, 2002: Investiture Speech, Sacramento, California. Remarks supplied.

Since becoming a judge in 2002, I have occasionally sworn in attorneys and local officials. I have also performed wedding ceremonies since becoming a judge. I have no notes, transcripts, or recordings of these events.

Since 2009, I have been a director of the Natomas Pacific Pathways Preparatory Charter School and occasionally made remarks during meetings. Minutes of the meetings I attended are supplied.

Since 1997, I have been a member of the St. Francis Elementary School Parent Club and served as President of the Club from 2006 to 2010. During these meetings, I occasionally made remarks and gave presentations. Meeting minutes that I have been able to obtain are supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

2011 Interview by Harry Henry, Sacramento County Sheriff Officer and community activist. Video recording supplied.

*Judge Troy Nunley '82 Named Judge of the Year*, Sacred Heart Cathedral Preparatory, Jan. 14, 2010. Copy supplied.

John Grennan, *Order in the Court*, Saint Mary's Magazine, Oct. 1, 2008. Copy supplied.

Hudson Sangree, *Mom Helped Steer Judge on Right Path*, Sacramento Bee, Dec. 23, 2006. Copy supplied.

Cheryl Miller, *Judicial Profile: Troy Nunley*, The Recorder, June 13, 2006. Copy supplied.

Stacy Boulware Eurie, *Deputy Attorney General Achieves Lifelong Dream of Judicial Appointment*, Sacramento Lawyer, Sept./Oct. 2002. Copy supplied.

Ramon Coronado, *Davis Names 2 to Superior Court Bench*, Sacramento Bee, Aug. 7, 2002. Copy supplied.

Diana Griego Erwin, *Struggling to Keep a Family Together*, Sacramento Bee, Nov. 12, 1998. Copy supplied.

Endorsement of Courage to be You (C2BU) on the organization's web site. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since 2002, I have been a Superior Court judge for the State of California in and for the County of Sacramento. California Governor Gray Davis appointed me in July 2002. I was re-elected to office without opposition on June 8, 2010. My current term of office expires January 2, 2017. I sit in a state trial court of general jurisdiction while handling both criminal and civil matters. However, most of the cases I handle are criminal matters.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 414 cases that have gone to verdict or judgment following a jury or bench trial.

- i. Of these, approximately what percent were:

jury trials:	35%
bench trials:	65%
civil proceedings:	5%
criminal proceedings:	95%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

As a state trial court judge, I have not written any opinions. Most of my trials have involved juries, and juvenile court trials without a jury, where written opinions are not required and where all rulings are made orally on the record.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *People v. Chapman, et al.*, Sacramento Superior Court Case No. 03F08560; Jury Trial (Date of Conviction: April 16, 2009)

Defendants were high school football players attending a house party. Defendant Reyes left the party with defendant Chapman after hearing a heckler profess his gang allegiance. As they left, Chapman showed Reyes a gun and told him that he intended to fire into the air to scare the heckler. As the heckler continued, both defendants got into Reyes' vehicle, made a u-turn and slowly drove back toward the house party. Chapman fired at the heckler but missed and instead fatally wounded an innocent teenager who happened to be outside talking on a cellular phone. The main issue at trial was whether Reyes was guilty of the murder as an aider and abettor. Chapman was convicted and Reyes was acquitted of murder based on an aiding and abetting theory. Chapman's conviction was subsequently overturned on appeal, but he later pled guilty to manslaughter and was sentenced to state prison.

Attorney for the People: Chris Ore, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorneys: Amy Rogers (defendant Chapman), 700 H Street, Sacramento, California 95814, (916) 874-6056; Michael Bowman (defendant Reyes), 801 J Street, Sacramento, California 95814, (916) 448-3801

2. *People v. Vlasov*, Sacramento County Superior Court Case No. 00F02479; Jury Trial (Date of Conviction: December 20, 2005)

Defendant had recently moved from Russia to the United States and met another young man at church. Together they started stealing high-end luxury cars which they sold to the Russian mafia. In the course of attempting to steal a new BMW driven by a young Korean woman, the defendant shot her in the ribs, killing her instantly. The main issue in the case was whether or not the defendant had the mental capacity to form the specific intent for the murder. The defense presented expert testimony that the defendant was easily influenced by others and that the

defendant was functioning close to the range of being mentally handicapped. The defendant was convicted of murder and sentenced to state prison.

Attorney for the People: John Pezone, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Mark Millard, 411 34th Street, Sacramento, California 95816, (916) 446-4600

3. *People v. Spencer*, Sacramento County Superior Court Case No. 03F05385; Jury Trial (Date of Conviction: June 18, 2004)

The 60-year-old defendant and his wife cared for an 11-year-old neighbor girl while her father worked. Over time, defendant introduced her to pornography and began to sexually assault her. One day the father came home from work and found the defendant performing a sex act on his daughter. The police were notified and the defendant was arrested. During a search warrant of the defendant's residence, officers from the high tech crimes task force found over 20,000 images of child pornography on the defendant's computers. The defendant was convicted and sentenced to state prison.

Attorney for the People: Valerie Brown, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Judy Kent, 700 H Street, Sacramento, California 95814, (916) 874-6056

4. *People v. Czub*, Sacramento County Superior Court Case No. 02F06122; Jury Trial (Date of Conviction: April 9, 2004)

The defendant was approximately 35 years old when he began molesting his best friend's 10-year-old daughter. The defendant also convinced the friend's 17-year-old daughter to become his girlfriend; he then began molesting her while engaging in intercourse with her on a number of occasions. During the trial, evidence was also presented that the defendant molested several other young girls. The main issue was the admissibility of the prior uncharged molestations. I allowed the evidence to be introduced pursuant to California Evidence Code section 1108, which allows for the introduction of uncharged sexual offenses in a trial where the defendant is charged with a sexual offense. The defendant was convicted and sentenced to state prison.

Attorney for the People: Heidi Smith, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Bradley Holmes, 1007 Seventh Street, Suite 205, Sacramento, California 95814, (916) 448-1296



5. *People v. Kao*, Sacramento County Superior Court Case No. 04F04427; Jury Trial (Date of Conviction: August 29, 2005)

The defendant, who was born and raised in Taiwan, moved to the United States after marrying an American citizen who was a single father of a young daughter. The defendant stayed home to care for the daughter. When the young girl would become disobedient, the defendant would resort to corporal punishment. One day, the defendant beat the girl and strangled her into a persistent, vegetative state. At trial, Taiwanese cultural experts testified that the defendant was influenced by her culturally-influenced attitudes about her role as a wife and mother, a child's duty to unquestioningly obey parental authority, and defendant's mental problems which included depression and possibly post-traumatic stress syndrome. The defendant was convicted and sentenced to prison. I recently learned that the child died and the Sacramento County District Attorney's Office is now considering whether or not to charge the defendant with murder.

Attorney for the People: Valerie Brown, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Jerry Chong, 501 S Street, Suite 2, Sacramento, California 95811, (916) 443-7398

6. *People v. Meskeil*, Sacramento County Superior Court Case No. 10F05413; Jury Trial (Date of Conviction: February 18, 2011)

The defendant was accused of a home invasion robbery of an elderly husband and wife. The husband was brutally beaten while the wife watched. The victims were unable to provide any identification of the suspects, although the defendant's DNA was found on a zip tie used to tie up the husband. The defendant alleged that he was a cable installer who used the zip ties during the course of his employment. The key issue was the reliability of eyewitness identification and the possibility that the defendant's DNA was left there as a result of his employment. The jury acquitted the defendant, who was sentenced to county jail on an unrelated probation violation.

Attorney for the People: Frederick Gotha, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Joann Virata, 700 H Street, Sacramento, California 95814, (916) 874-6056

7. *People v. Alexander*, Sacramento County Superior Court Case No. 10F05063; Jury Trial (Date of Conviction: July 29, 2011)

The defendant and the victim were a homeless couple. Following an argument, the victim exited the motor home owned by the defendant and stood outside. The defendant started the motor home and backed into the victim. The defendant exited the motor home, disengaged the victim from the rear wheel well area and got back into the vehicle. The victim was still alive and talking at the time defendant fatally ran over her a second time. At trial, the defendant claimed that he did not know the victim was behind the motor home. The defendant was convicted of murder and sentenced to life in prison. In addition to the murder, the defendant was also sentenced under California's three strikes sentencing scheme.

Attorney for the People: Caroline Park, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: James Warden, 428 J Street, Suite 350, Sacramento, California 95814, (916) 206-4315

8. *People v. Shelton*, Sacramento County Superior Court Case No. 09F07206; Jury Trial (Date of Conviction: July 11, 2011)

The defendant was a bartender who had previously permanently kicked the victim and his friends out of a local bar. One day, the victim and his friends arrived at a bar that the defendant frequented. The victim punched the defendant in the face, whereupon the defendant stabbed the victim two times. One of the stab wounds came perilously close to killing the victim. At trial, the defendant claimed he acted in self-defense, arguing that he had a right to defend himself against the victim whom the defendant knew was a former Marine trained in hand-to-hand combat. The defendant was convicted and sentenced to state prison.

Attorney for the People: Rona Filippini, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorney: Eric Handler, 700 H Street, Sacramento, California 95814, (916) 874-6056

9. *People v. Aquino, et al.*, Sacramento County Superior Court Case No. 10F07007; Jury Trial (May 13, 2011)

The defendants Aquino and Jones burglarized several residences in a local upscale community while defendant Santos-Green remained nearby in a vehicle. A neighbor called the police when she saw the defendants taking items from her neighbor's house. The police arrived and the defendants were arrested. The property from each of the residences was found inside the vehicle that was occupied by defendant Santos-Green. The main issue in the case was whether or not the eyewitness identification was reliable. Both defendant Aquino and defendant Jones were convicted and sentenced to prison while defendant Santos-Green was acquitted.

Attorney for the People: Samuel Alexander, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorneys: John Lippsmeyer (defendant Aquino), 2240 Tamarck Way, Sacramento, California 95821, (916) 924-3733; David Lynch (defendant Jones), 700 H Street, Sacramento, California 95814, (916) 874-6056; Lisa Franco (defendant Santos-Green), 901 H Street, Suite 125, Sacramento, California 95814, (916) 442-5555

10. *People v. Mayen*, Sacramento County Superior Court Case No. 10F06399; Jury Trial (Date of Conviction: March 16, 2011)

After teachers at a local elementary school heard him using inappropriate language, the defendant's grandson revealed to school officials that his grandfather had inappropriately touched him. Once the authorities were notified, the defendant was arrested. During the trial, the defendant's daughters revealed for the first time that the defendant had been molesting them for years and telling them not to tell anyone. However, up until the trial, they had never reported the prior molestations. The main issue was whether or not the prior uncharged molestations would be admitted into evidence. I allowed the evidence to be introduced pursuant to California Evidence Code section 1108 which allows for the introduction of uncharged sexual offenses in a trial where the defendant is charged with a sexual offense. The defendant was convicted and sentenced to prison.

Attorney for the People: Nancy Cochrane, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-5701

Defense Attorneys: David Lynch, 700 H Street, Sacramento, California 95814, (916) 874-6056

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

As a state trial court judge, I have not written any opinions. Most of my trials have involved juries, and juvenile court trials without a jury, where written opinions are not required and where all rulings are made orally on the record.

- e. Provide a list of all cases in which certiorari was requested or granted.

I have had no cases in which certiorari was requested or granted.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

*People v. Chapman*, Sacramento County Superior Court Case No. 03F08560, *rev'd*, 2008 Cal. App. Unpub. LEXIS 5299. The conviction as to defendant Chapman was overturned on appeal based on instructional error. During the trial I instructed the jury on three theories of second degree murder. The appellate court held that I committed error in instructing the jury on second degree felony murder because the inherently dangerous felony of negligent discharge of a weapon was not independent of the murder and merged with the underlying murder for purposes of felony murder. The appellate court further held that I committed error in instructing the jury on second degree, natural and probable consequences murder. The court reasoned that this instruction applied to aiders and abettors but since defendant Chapman was the direct perpetrator, the instruction should not have been given. On April 16, 2009, during the retrial defendant Chapman pled to manslaughter and was sentenced to 42 years in state prison.

*People v. Hertzig*, Sacramento County Superior Court Case No. 05F08338, *rev'd in part*, 156 Cal. App. 4th 398 (2007). The defendant's conviction was partially reversed on appeal and remanded for resentencing. The jury found the defendant guilty of multiple misdemeanor counts of possession of child pornography. The appellate court held that the defendant could only be convicted of a single misdemeanor count of possession of child pornography since the facts established that the material was possessed simultaneously. During the resentencing hearing the defendant was again sentenced to state prison for the exact same life term that he initially received.

*People v. Paysinger*, Sacramento County Superior Court Case No. 07F09069, *aff'd as modified*, 174 Cal. App. 4th 26 (2009). The defendant's conviction was upheld on appeal but his probation conditions were slightly modified. When I placed the defendant on probation I ordered that he not own, use or possess any deadly or weapons and I also ordered that he not associate with gang members. The appellate court modified those conditions and inserted a personal knowledge requirement. Thus, the defendant could not associate with known gang members or associate with people he knew were armed with deadly or dangerous weapons. The defendant's sentence was otherwise confirmed.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a state trial court judge, I have not written any opinions. Most of my trials have involved juries, and juvenile court trials without a jury, where written opinions are not required and where all rulings are made orally on the record.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not authored any significant opinions on federal or state constitutional issues.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeal.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Pursuant to California Code of Civil Procedure section 170.6, the Sacramento County Superior Court employs a system whereby the litigants are allowed to exercise one peremptory challenge against a judge assigned to a case without the need to show cause. However, judges are not informed of such a challenge and are precluded from inquiring whether or not any challenges have been lodged against him/her.

California Code of Civil Procedure section 170.3 sets forth a procedure whereby a judge may be challenged for cause. I have never been challenged for cause.

I have never recused myself sua sponte.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2012, I endorsed Tami Bogert for Superior Court Judge in the County of Sacramento, Office 3.

In 2004, I endorsed Pamela Smith-Steward for Superior Court Judge in the County of Sacramento, Office 20.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I never served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I practiced law alone from 1994 – 1996. The address of my practice was: The Law Offices of Troy L. Nunley, 1032 East Fourteenth Street, San Leandro, California 94577.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1994

Alameda County District Attorney's Office  
1225 Fallon Street, Room 900  
Oakland, California 94612  
Deputy District Attorney (1991 – 1994)  
Law Clerk (1990 – 1991)

1996 – 1999

Sacramento County District Attorney's Office  
901 G Street  
Sacramento, California 95814  
Deputy District Attorney

1999 – 2002

California Department of Justice  
Office of the Attorney General  
1300 I Street  
Sacramento, California 95814  
Deputy Attorney General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1990 to 1994, I worked as a Deputy District Attorney in Alameda County. As a prosecutor, I handled routine superior court matters such as arraignments, bail hearings, preliminary examinations, settlement conferences and probation revocation hearings. I spent the bulk of my time prosecuting misdemeanor jury trials, as well as misdemeanor and felony juvenile court bench trials.

From 1994 to 1996, I worked as a general practitioner in the areas of criminal law, workers' compensation, personal injury, federal civil rights and juvenile delinquency. In the five months prior to the closure of my office to join the Sacramento County District Attorney's Office, I primarily practiced criminal defense.

From 1996 to 1999, I worked as a Deputy District Attorney for the Sacramento County District Attorney's Office. As a prosecutor, I continued to handle routine superior court matters such as arraignments, bail hearings, preliminary examinations, settlement conferences and probation revocation hearings. However, I spent the bulk of my time prosecuting felony jury trials in superior court. I was also assigned to the Domestic Violence Unit where I specialized in prosecuting stalking cases, an emerging area of the law at the time. I was later assigned to the gangs section of the Major Crimes Unit where I prosecuted crimes committed by hard core gang members.

Between 1999 and 2002, I worked as a Deputy Attorney General for the California Attorney General's Office. As a Deputy Attorney General assigned to the Appeals, Writs and Trials section, my practice involved preparing responses to appeals filed by criminal defendants with the state appellate courts. These appeals involved felony convictions where the appellant contested issues such as jury misconduct, instructional error, insufficient evidence or prosecutorial misconduct. When necessary, I argued these appeals before the state appellate courts. I also responded to petitioner writs of habeas corpus before both the state appellate and the federal courts. These writs involved evidence that was not part of the trial which petitioner alleged would have altered the outcome had the evidence been presented at trial. I also responded to petitions filed by inmates on death row as part of the office's Complex Capital Litigation Unit.

As a Deputy Attorney General, I also served as an expert in criminal street gangs, hate crimes and domestic violence/stalking. In addition, I served as a member of the California Department of Justice's Hate Crimes Task Force. I also served as an expert in the review of search warrants.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Between 1990 and 1994, while at the Alameda County District Attorney's Office, my client was the People of the State of California.

From 1994 to 1996, my typical clients were criminal defendants accused of misdemeanors and felonies, people who suffered personal injuries, people alleging claims for excessive force by law enforcement, workers injured on the job and juveniles accused of serious felony offenses. My primary emphasis during my years as a sole practitioner was criminal law.

Between 1996 and 1999, while working at the Sacramento County District Attorney's Office, my client was the People of the State of California.



From 1999 to 2002, while employed by the California Attorney General's Office, in the context of direct appeals filed with the state courts of appeal, as well as writs before those courts, my client was the People of the State of California. With regard to both federal habeas and capital litigation, my typical client was either the warden of the prison where petitioner was incarcerated or the California Department of Corrections.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 2%  |
| 2. state courts of record:  | 98% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 15% |
| 2. criminal proceedings: | 85% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 50 criminal jury trials to verdict as sole counsel. I tried 98 non-jury criminal trials to verdict while working in juvenile court.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 33% |
| 2. non-jury: | 66% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of

the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *People v. Young*, Sacramento County Superior Court Case No. 95F03250; Jury Trial (Date of Conviction: June 10, 1999)

I tried this case on behalf of the People as sole counsel. Defendant, a member of the Fruitridge Bloods criminal street gang, shot into a vehicle carrying members of the rival Crips gang. As a result a 13-year-old, who by all accounts was not a member of either gang, suffered a fatal gunshot wound to the head. Although there were no eyewitnesses to the shooting, the jury returned a verdict of guilty after hearing the testimony of the investigating officers, defendant's former friends, as well as a jailhouse informant who was willing to testify for the prosecution despite not being offered any inducements. The defendant was sentenced to life in prison. The Honorable James I. Morris (retired) presided.

Opposing Counsel: Michael J. Aye, 117 J Street, Suite 202, Sacramento, California 95814, (916) 447-1278

2. *People v. Fields*, Sacramento County Superior Court Case No. 96F07265; Jury Trial (Date of Conviction: March 5, 1999)

I tried this case on behalf of the People as sole counsel. During the course of an argument with the mother of his two young sons, the defendant killed the victim with a stab wound to her neck. Witnesses established that during the course of a camping trip, the victim and defendant became agitated with one another while engaging in several arguments. The victim was stabbed while traveling as a passenger in a vehicle driven by friends of the defendant. Before her death, the victim gave a dying declaration to an off-duty paramedic officer who stopped alongside the road to help the victim. The jury convicted the defendant of murder rather than the lesser offense of manslaughter, whereupon he was sentenced to life in prison. The Honorable James T. Ford (deceased) presided.

Opposing Counsel: Bart Wooten, 5700 Laguna Park Drive, Elk Grove, California 95758, (916) 440-6988

3. *People v. Chandler*, Sacramento County Superior Court Case No. 98F05947; Jury Trial (Date of Conviction: December 4, 1998)

I tried this case on behalf of the People as sole counsel. Defendant, while in custody after being convicted of violating a restraining order, called the subject named in the restraining order, and repeatedly threatened to kill her. Defendant had a history of physical and mental abuse of the victim. Defendant repeatedly told the victim that upon getting out of custody, he would again violate the restraining order, come to her residence and kill her. Once the defendant was free from custody he went to the victim's residence, entered without invitation and sexually assaulted the victim. The jury convicted the defendant of violating the restraining order, terrorist threats and sexual battery. The defendant was sentenced to several years in state prison. The Honorable Thomas Cecil (retired) presided.

Opposing Counsel: Carol Pulido, County Counsel's Office, 3331 Power Inn Road, No. 350, Sacramento, California 95826, (916) 875-9921

4. *People v. Riddle*, Sacramento County Superior Court Case No. 97F05720; Jury Trial (Date of Conviction: September 11, 1998)

I tried this case on behalf of the People as sole counsel. Defendant and the victim, his girlfriend who had come to visit from Mexico, went to a bar where they started drinking and arguing. Upon returning to the defendant's residence, they went to sleep only to wake up fighting and yelling in the early morning hours. As the victim attempted to leave, the defendant shot the victim in the temple. The victim died instantly. During the trial, the defendant unsuccessfully argued that the victim took the gun from his nightstand, they struggled over the weapon and it accidentally discharged, thereby striking the victim. A criminalist, called to testify as an expert for the prosecution, successfully demonstrated that defendant's version of events was inconsistent with the physical evidence. The jury rejected the defense and found the defendant guilty of murder, whereupon he was sentenced to life in prison. The Honorable Richard Park (retired) presided.

Opposing Counsel: Linda Parisi, 1101 E Street, Sacramento, California 95814, (916) 441-4888

5. *People v. Villanueva*, Sacramento County Superior Court Case No. 97F03280; Jury Trial (Date of Conviction: 1997)

I tried this case on behalf of the People as sole counsel. Defendant, a former professional boxer, punched, kicked and slapped his two teenage daughters during an argument. Their mother, defendant's wife, was in the process of separating from the defendant. Defendant subsequently pulled his wife's hair, slapped her in the face and threatened to kill her. During the trial, all the victims recanted and attempted to testify for the defendant. The defendant argued that his family was

mad at him on the night in question and exaggerated the situation to the police. The jury convicted the defendant of battery against his daughters and terrorist threats against his wife. The Honorable Rothwell Mason (visiting judge) presided.

Opposing Counsel: Laurence Walton, 901 H Street, Suite 104, Sacramento, California 95814, (916) 441-3940

6. *People v. Kirby*, Sacramento County Superior Court Case No. 97F03800; Jury Trial (Date of Conviction: September 18, 1997)

I tried this case on behalf of the People as sole counsel. Defendant punched and beat his wife before taking a knife and threatening to kill her. An elderly couple, who lived next door to the defendant and the victim, tried to intervene after seeing the defendant punching and kicking the victim in the face outside the couple's home. The defendant threatened to beat the elderly man. The victim was initially reluctant to testify, however, a victim's advocate and I were able to convince the victim to do so. The jury convicted the defendant of spousal abuse, assault with a deadly weapon and terrorist threats. The Honorable Nancy Sweet (retired) presided.

Opposing Counsel: Defendant proceeded pro per and was incarcerated in the California State Prison system.

7. *People v. Hammer*, Sacramento County Superior Court Case No. 96F03016; Jury Trial (Date of Conviction: March 20, 1997)

I tried this case on behalf of the People as sole counsel. After coming to California from Michigan, the defendant moved into an apartment near the victim, who was introduced to him by a mutual friend. The victim, a single mother with custody of two small boys, established a friendly relationship with the defendant and tried to make him feel welcome. Defendant went to the victim's apartment one night and stabbed her eighteen times before taking her VCR. The victim's children witnessed the attack. The defendant was arrested days later after he was detained by store security while trying to steal a television. The victim survived and testified against the defendant at trial. The jury convicted the defendant of attempted murder, residential robbery, use of a deadly weapon and commercial burglary. Defendant is currently serving a lengthy state prison term, including the possibility of life in prison. The Honorable W.J. Harpham (visiting judge) presided.

Opposing Counsel: Eric Ross, California Department of Social Services, MS 9-16-44, 744 P Street, Sacramento, California 95814, (916) 651-0927

8. *People v. Martinez*, Sacramento County Superior Court Case No. 96F09318; Jury Trial (Date of Conviction: March 3, 1997)

I tried this case on behalf of the People as sole counsel. Defendant had a history of beating and raping the victim, the mother of his child. However, the victim would not report the abuse. After being beaten and threatened by the defendant one day, the victim decided to leave. In an attempt to find the victim, who had been gone for several days, the defendant went to the apartment of the victim's sister. The victim had been staying there but was not at the apartment when the defendant arrived. After waiting a few moments for the victim to return, defendant went outside the apartment door, returned with a can of gasoline and set the apartment afire with the sister and her boyfriend still inside. The occupants were barely able to escape with their lives. The jury convicted the defendant of arson with an accelerant, spousal abuse and terrorist threats. The defendant was sentenced to serve a lengthy term in state prison. The Honorable Jeffrey Gunther (retired) presided.

Opposing Counsel: Diane Howard, 700 H Street, Sacramento, California 95814, (916) 874-6056

9. *People v. Mason*, Sacramento County Superior Court Case No. 96F03804; Jury Trial (Date of Conviction: December 11, 1996)

I tried this case on behalf of the People as sole counsel. Defendant, while attending a party near the victims' apartment, became loud and belligerent and began directing derogatory comments at the three female victims. Defendant began fighting with one of the women after throwing a drink in her face. Defendant left the scene of the fight, only to return a short time later armed with a sawed-off shotgun. Defendant pointed the weapon at the three women and threatened to kill them. The jury convicted the defendant of several counts each of assault with a deadly weapon and terrorist threats, in addition to convicting the defendant of being an ex-felon in possession of a weapon. The defendant was sentenced to several years in state prison. The Honorable Ronald Tochtermann (retired) presided.

Opposing Counsel: Defendant proceeded pro per and was incarcerated in the California State Prison system.

10. *People v. Carson*, Sacramento County Superior Court Case No. 96F03202; Jury Trial (Date of Conviction: September 11, 1998)

I tried this case on behalf of the People as sole counsel. Defendant sat outside in the vehicle while his female accomplice went inside Bel-Air Market and stole a wallet from an elderly woman. The victim chased the accomplice out of the store, whereupon store personnel joined the chase. In an attempt to help his female accomplice get away, the defendant drove his car directly into the group, which included the victim and several store employees. They were forced to jump out of the path of the oncoming car and one of the employees had to pull the elderly

victim to safety. Defendant jumped out of his car, went to the trunk of his car and threatened to shoot members of the group. Defendant subsequently got into a fight with several of the male employees who were able to subdue him until the police arrived. The victim died several days later from a heart attack. Although the victim's doctor said that the stress from the robbery probably caused her death, the judge disallowed this evidence, and as a result, the jury subsequently convicted the defendant of robbery and assault with a deadly weapon. Pursuant to the three strikes law, the defendant is currently in prison for life. The Honorable Michael Garcia (retired) presided.

Opposing Counsel: Richard Dudek, 901 H Street, Suite 301 Sacramento, California 95814, (916) 444-7595

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I am currently an inactive emeritus member of the University of the Pacific, McGeorge School of Law Inn of Court. The McGeorge Inn membership is comprised of local state court trial judges, state court appellate justices, federal district court judges, a federal appellate court justice and local attorneys. While an active member I participated in Inn meetings where we discussed contemporary legal issues. The Inn has also discussed civility in the law and the lawyer's place in society. The Inn illustrates topical legal issues through the use of skits performed by members.

On numerous occasions I have also participated in Operation Protect & Defend (OPD), an organization comprised of judges and lawyers who volunteer one hour of their time to participate in "Dialogue on America." This program brings judges and lawyers into local high school civics and government classes to discuss the U.S. Constitution, civil rights, and the responsibility to participate in our democratic society.

I have not engaged in any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I currently teach at Lincoln Law School of Sacramento where I have been employed as a professor teaching upper-division Corporations and Business Partnerships since August, 2006. Syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I plan to continue teaching upper-division Corporations and Business Partnerships at Lincoln Law School of Sacramento.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will fully comply with 28 U.S.C. Sections 144 and 455a, the Judicial Code of Conduct for United States Judges, and any and all other applicable conflict rules.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a public servant for the majority of my career I have made a point of helping disadvantaged youth throughout the Sacramento region. I have spoken to a large number of disadvantaged youth on topics such as juvenile justice, making the right choices, setting goals, preparing for the future, the judicial system, education and overcoming adversity.

I have served as a speaker and facilitator for the 100 Black Men Young African American Male Conference as well as their forum directed at young African American men, Know Your Rights. I have also served as an inspirational speaker for the Hanna Boys Center in Napa County.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In September 2011, I completed my application for United States District Judge, Eastern District of California and submitted it to Senator Dianne Feinstein's Judicial Advisory Committee. On January 11, 2012, I interviewed with five members of the Committee. On January 12, 2012, I was notified that I was one of three persons whose names would be sent to Senator Feinstein for further consideration. On February 3, 2012, I interviewed with David S. Casey, Jr., the chair of Senator Dianne Feinstein's Judicial Advisory Committee, in San Diego. In April 2012, I learned that Senator Feinstein had recommended my name to the White House for consideration.

Since April 4, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 7, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 25, 2012, the President submitted my nomination to the Senate.



- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Nunley, Troy L.	<b>2. Court or Organization</b> United States District Court, Eastern District of California	<b>3. Date of Report</b> 6/25/2012
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> United States District Court Judge - Active	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 6/25/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 1/01/2011 to 6/26/2012
<b>7. Chambers or Office Address</b> 720 9th Street, Department 30 Sacramento, California 95814		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 08/26/02	California Judges Retirement Account with State of California - Defined Benefit Plan (no control)
2. 05/01/10	CalPers Retirement Account with State of California - Defined Benefit Plan (no control)
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 6

Name of Person Reporting	Date of Report
Ninley, Troy L.	6/25/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Sacramento County Superior Court - salary	\$74,495.45
2. 2012	Lincoln Law School - salary	\$1,337.50
3. 2011	Sacramento County Superior Court - salary	\$178,789.08
4. 2011	Lincoln Law School - salary	\$6,696.00
5. 2010	Sacramento County Superior Court - salary	\$178,789.08
6. 2010	Lincoln Law School - salary	\$6,855.61

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.*
*(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2012	State of California, Department of Health Care Services - salary
2. 2011	State of California, Department of Health Care Services - salary
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.*
*(It includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 6

Name of Person Reporting	Date of Report
Nunley, Troy L.	6/25/2012

**V. GIFTS.** (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children; see pp. 52-53 of filing instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	AT&T Universal Card (Citibank)	Credit Card	J
2.	St. Francis Elementary School	Private School Tuition	None
3.	Fedloan Servicing	Parent Plus Education Loan	K
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 6

Name of Person Reporting	Date of Report
Nunley, Troy L.	6/28/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of spouse and dependent children; see pp. 31-50 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g., div., rent, or net)	Value	Value	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value	Gain	Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Code 2 (Q-W)			Code 2 (J-P)	Code 1 (A-H)	
1. Sacramento Credit Union - cash account	A	Interest	K	T	Exempt				
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Interest/Gain Codes (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 - \$50,000 N - \$250,001 - \$500,000 P1 - \$250,000.01 - \$500,000.00	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$5,000,000	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	E - \$15,001 - \$50,000
2. Value Codes (See Columns 1 and D3)	Q - Appraisal U - Book Value	R - Cost (Real Estate Only) V - Other	S - Assessed W - Stimulated	T - Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

Name of Person Reporting	Date of Report
Nutley, Troy L.	6/25/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

## FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting	Date of Report
Nunley, Troy L.	6/25/2012

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Troy L. Nunley*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 Suite 2-301  
 One Columbus Circle, N.E.  
 Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		16	726	Notes payable to banks-secured (auto)		21	724
U.S. Government securities				Notes payable to banks-unsecured		19	117
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		49	092
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		650	906
Real estate owned - see schedule		756	434	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		52	000	Education loans		29	000
Cash value-life insurance							
Other assets itemize:							
California Judges Retirement System II		368	663				
CalPERS pension plan		3	171				
				Total liabilities		769	839
				Net Worth		427	155
Total Assets	1	196	994	Total liabilities and net worth	1	196	994
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor		44	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							



## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Real Estate Owned

Personal residence	\$ 725,000
Timeshare #1	16,900
Timeshare #2	14,534
Total Real Estate Owned	\$ 756,434

Real Estate Mortgages Payable

Personal residence – primary mortgage	\$ 569,807
Personal residence – second mortgage	71,322
Timeshare #1	9,776
Total Real Estate Mortgages Payable	\$ 650,905

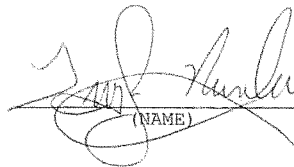
Voluntary Debt Repayment Plan

I voluntarily entered into a debt repayment plan in October 2010. Since that time, my family has closed most of our credit card accounts, maintaining only one card for emergencies. Further, I have made additional payments above those required by my debtors to repay the debt at an accelerated rate. As a result, the entirety of my credit card debt and the unsecured note payable to the bank will be paid off by October 2014.

AFFIDAVIT

I, Troy L. Nunley, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

June 25, 2012  
(DATE)


  
(NAME)

  
(NOTARY)

## JURAT

State of California

County of Sacramento } ss.Subscribed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of June, 2012, byTroy L. Nunley, proved to me on the basis of satisfactory evidenceto be the person(s) who appeared before me.

  
NOTARY SIGNATURE

Senator SCHUMER. Thank you, Judge Nunley.  
Now we have Judge Chappell.

**STATEMENT OF HON. SHERI POLSTER CHAPPELL, NOMINEE  
TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF  
FLORIDA**

Judge CHAPPELL. Thank you. Thank you, Senators, for convening this hearing. I would like to thank President Obama for the honor that he has bestowed on me in nominating me for this very important position.

I would like to thank Senator Nelson for the kind remarks and the introduction and Senator Rubio for his support of my nomination as well.

I would like to thank the Middle District of Florida Judicial Nominating Commission for their support in sending my name to the Senators for their consideration.

Senator Nelson introduced my family members, and I would just like to reiterate. My husband of 21 years, Christopher, is here. My son, Michael, who is a first-year college student, is here from Tallahassee. His plane was canceled, but he was able to make his way here in the weather. My son, Zachary, who is a junior at Bishop Verot Catholic High School in Fort Myers, Florida, is here. My only brother, Barry, is here from Wisconsin. And I am very blessed to have a very supportive staff: Douglas Kemp, my law clerk of nine years is here. Brigitte Willauer, my second law clerk, is here; and a former law clerk, her husband, Nick Mizell, who is now with the law firm of Cheffy, Passidomo, and Naples, is here.

I am hoping that my parents, Henry and Joyce Polster, who are in their 80s and were unable to travel here, are watching this wonderful Webcast, and I believe they are at my Uncle Jim and Aunt Louanne's house in Wisconsin watching the Webcast. And other friends and family members of my husband and myself, family members in Pennsylvania and Wisconsin, and colleagues across the country who I have taught with through the Federal Judicial Center and the Administrative Office of the Courts.

I also would like to thank and welcome the colleagues that I have in the Middle District of Florida, and specifically my court family from Fort Myers, who, I am sure, are watching on the projection screen in my courtroom. My courtroom deputy, Leslie Friedman, has promised to have the Webcast shown to them for their support and consideration.

Thank you for giving me the opportunity to introduce again everyone, and I stand ready to answer any questions that you have.

[The biographical information follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Sheri Polster Chappell  
Sheri Jean Polster

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Middle District of Florida

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Courthouse and Federal Building  
2110 First Street, Suite 5-107  
Fort Myers, Florida 33901

4. **Birthplace:** State year and place of birth.

1962; Sheboygan, Wisconsin

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1984 – 1987, Nova Southeastern University Law School (formerly Nova Law Center);  
J.D., 1987

1982 – 1984, University of Wisconsin-Madison; B.A., 1984

1980 – 1982, University of Wisconsin-Eau Claire; no degree awarded

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – present

United States District Court for the Middle District of Florida  
2110 First Street, Suite 5-107  
Fort Myers, Florida 33901  
United States Magistrate Judge

2000 – 2003

State of Florida, Twentieth Judicial Circuit  
Lee County Justice Center  
1700 Monroe Street  
Fort Myers, Florida 33901  
Lee County Court Judge

1987 – 2000

Office of the State Attorney, Twentieth Judicial Circuit  
Lee County Justice Center  
2000 Main Street, 6th Floor  
Fort Myers, Florida 33901  
Executive Staff Member (1999 – 2000)  
Charlotte County Office Head (1998 – 2000)  
Supervisor of Fort Myers Circuit Court Trial Division (1993 – 1998)  
Hendry County Office Head (1991 – 1993)  
Felony Attorney (1988 – 1991)  
Misdemeanor Attorney (1987 – 1988)  
Assistant State Attorney (1987 – 2000)

1990 – 2000

Southwest Florida Criminal Justice Academy  
4312 Michigan Avenue  
Fort Myers, Florida 33905  
Legal Studies Instructor for Law Enforcement, Corrections, and Auxiliary Academies,  
and Advanced Incentive Classes

Spring 1987

Performed law clerk duties for the following law firms:

Hitchcock and Cunningham, P.A.  
613 S.E. First Avenue  
Fort Lauderdale, Florida 33301

Law Office of Marc S. Nurik (later Nurik and Kyle, P.A.)  
750 S.E. Third Avenue, Suite 300  
Fort Lauderdale, Florida 33316  
Additional term: Summer 1986

Daniel Tadesco, P.A.  
320 S.E. Ninth Street  
Fort Lauderdale, Florida 33316  
Additional term: Summer 1986

Marc Gold, Esquire  
750 S.E. Third Avenue, Suite 300  
Fort Lauderdale, Florida 33316

Cummins and Bass, P.A.  
700 S.E. Third Avenue, Suite 401  
Fort Lauderdale, Florida 33316

Fall 1986  
Office of the State Attorney – Seventeenth Judicial Circuit Court  
210 S.E. Sixth Street  
Fort Lauderdale, Florida 33301  
Certified Legal Intern – Juvenile Division

Summer 1986  
Michael Hursey, P.A.  
2455 East Sunrise Boulevard  
Suite #805  
Fort Lauderdale, Florida 33304  
Law Clerk

1985 – 1986  
Kuin and Carmen, P.A.  
Andrews Avenue  
Fort Lauderdale, Florida 33315  
Law Clerk

Other Affiliations (Uncompensated):

1995 – present  
Pinecrest Homeowner's Association  
c/o Cornerstone Association Management  
11940 Fairway Lakes Drive, Suite 4  
Fort Myers, Florida 33913  
President (1997 – present)  
Vice President (1996 – 1997)  
Board Member (1995)

2007 – 2011  
Calusa Chapter of the American Inn of Court  
12239 Championship Circle

Fort Myers, Florida 33913  
 Past President (2010 – 2011)  
 President (2008 – 2010)  
 Secretary/Treasurer (2007)

2000 – 2004  
 Gateway Trinity Church Council  
 Gateway Trinity Church  
 11381 Gateway Boulevard  
 Fort Myers, Florida 33913  
 Board Member (2000 – 2004)  
 President (2004)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have never registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Calusa Inn of Court Distinguished Service (2010)

Jurist of the Year, Lee County Association of Women Lawyers (2003)

Outstanding Contribution and Dedicated Service, Office of the State Attorney, Twentieth Judicial Circuit (1987 – 2000)

Outstanding Leadership and Dedication Award, Office of the State Attorney, Twentieth Judicial Circuit, Fort Myers Felony Division (1993 – 1998)

Ten Year Service Award, Office of the State Attorney, Twentieth Judicial Circuit (1997)

Employee of the Year, Office of the State Attorney, Twentieth Judicial Circuit (1995)

Outstanding Service and Dedication as Office Head of Hendry County, Office of the State Attorney, LaBelle Division (1991 – 1993)

Five Year Service Award, Office of the State Attorney, Twentieth Judicial Circuit (1992)

ATLA Mock Trial Competition Winner, Nova Law Center (1986, 1987)

ATLA Mock Trial Competition Runner-Up, Nova Law Center (1985)

Psi Chi National Honor Society for Psychology Students, University of Wisconsin-Madison (1982 – 1984)

Area Jaycees Academic Scholarship (1980)

National Honor Society Academic Scholarship (1980)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1987 – 1988)

American Trial Lawyers Association (1987 – 1988)

Calusa Chapter of the American Inns of Court  
 Past President (2010 – 2011)  
 President (2008 – 2010)  
 Secretary/Treasurer (2007)

Charlotte County Bar Association (1999 – 2000)

Conference of County Court Judges, State of Florida (2000 – 2003)

Federal Bar Association, Southwest Florida Chapter (2003 – present)

Federal Judicial Center and the Administrative Office of the U.S. Courts  
 Judges IT Training Advisory Committee (2009 – present)

Federal Magistrate Judges Association (2003 – present)

Florida Bar Association (1987 – present)

Florida Prosecuting Attorneys Association (1987 – 2000)

Hendry County Bar Association (1991 – 1993)

Lee County Bar Association (1987 – present)

Office of the State Attorney, Twentieth Judicial Circuit Executive Staff (1995 – 2000)

Southwest Florida Criminal Justice Academy Advisory Board (1995 – 2000)

United States District Court for the Middle District of Florida  
 Automation Committee (2003 – present)



Education Sub-Committee to the Historical Committee (2004 – present)  
 Congressional Relations Committee (2009 – present)  
 Security Committee (2010 – 2011)  
 Case Management and Judicial Relations Committee (2007 – 2008)  
 Bench Bar Committee (2003 – 2007)  
 Judicial Resources Committee (2005)  
 CM/ECF Policies and Procedures Committee (2004)  
 Jury Management Committee (2004)

At various times during my tenure with the State Attorney's Office, Twentieth Judicial Circuit, I served on the following committees: Domestic Violence Task Force, Juvenile Justice Council, Public Safety Coordination Council, and the Truancy Board. However, a diligent search of my records has not revealed the exact dates of participation.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Florida, 1987

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the Middle District of Florida, 1988

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Amateur Athletic Union (2002 – 2011)  
 Vikings Baseball Club, Parent Volunteer  
 Sidewinders Baseball Club, Parent Volunteer  
 Infinity Baseball Club, Parent Volunteer, and Team Mom

Gulf Coast Pelicans Baseball Club, Parent Volunteer, and Team Mom  
Stoneybrook Sharks Baseball Club, Parent Volunteer

Buckingham Little League (2002 – 2012)  
Assistant Coach, Parent Volunteer, and Team Mom

Cape Coral Little League (1988)  
Softball Coach/Volunteer

Gateway Trinity Church (1995 – present)  
Gateway Trinity Church Council (2000 – 2004)  
President (2004)  
Board Member (2000 – 2004)  
Boomers Group (1995 – present)  
Choir/Instrumental Group (2000 – 2004)

Pinecrest Homeowner's Association (1995 – present)  
President (1997 – present)  
Vice President (1996 – 1997)  
Board Member (1995)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to Question 11(a) currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

As a faculty member for the Federal Judicial Center and the Administrative Office of the U.S. Courts Training Divisions, I have created a training module and presentation on Lotus Notes Calendaring and E-Mail – *Extreme Makeover: Getting Organized*. Copy supplied.

As a judge, I contributed to the Judges Information Technology Website established by the Federal Judicial Center and the Administrative Office of the U.S. Courts. In this capacity, I created the following training materials, copies of which are supplied.

Abridged Docket Reports  
 Docketing Orders Directly from a Pending Motions Report  
 Cross-Document Hyperlinks to Documents  
 Using Wireless Access Cards  
 Remote Desktop  
 VPN Access

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

*Social Media Policy for the Middle District of Florida* (2010). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Having searched my records, memory and publicly available internet sources, I cannot locate or recall, and therefore have not identified any testimony, official statements or other communications relating to matters of public policy or legal interpretation.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

April 25, 2012: Judge of the final round of the Ave Maria School of Law Moot Court Competition. I served as one of the judges on the panel and offered evaluations and comments at the end of the round. I have no notes, transcripts, or recordings. The address for the Ave Maria School of Law is 1025 Commons Circle, Naples, Florida 34119.

April 17, 2012: Calusa Inn of Court presentation, *E-Discovery*. Presentation slides supplied.

March 21-23, 2012: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. Curriculum handouts and presentation slides supplied.

January 28, 2012: American Heroes Air Show and Naturalization Ceremony, Fort Myers, Florida. I have no notes, transcript, or recording, but press coverage is supplied.

January 26, 2012: Open Doors to the Federal Courts, Canterbury School, Fort Myers, Florida. Presentation slides supplied.

January 24, 2012: Open Doors to the Federal Courts, Canterbury School, Fort Myers, Florida. I used the same slides as those supplied for the January 26, 2012 event.

November 2, 2011: Hodges University Legal Society presentation, *The Federal System's CM/ECF Filing System*, Fort Myers, Florida. Presentation slides supplied.

October 26, 2011: Lee County Emerging Leaders presentation, *Welcome to the Federal Courts*, Fort Myers, Florida. Presentation slides supplied.

August 24-26, 2011: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I used the same handouts as those supplied for the March 21-23, 2012 event and my presentation slides are supplied.

August 8-12, 2011: Chambers IT Train the Trainer, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Diego, California. Presentation slides supplied.

May 17, 2011: Calusa Inn of Court presentation, *The Arizona Immigration Law*. Presentation slides supplied.

March 25, 2011: Twentieth Judicial Circuit presentation, *The Paperless Highway*. Presentation slides supplied.

March 15-17, 2011: Chambers IT Train the Trainer, Federal Judicial Center and the Administrative Office of the U.S. Courts, Orlando, Florida. Curriculum handouts and presentation slides supplied.

March 9-11, 2011: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I used the same handouts as those supplied for the March 21-23, 2012 event.

February 8, 2011: Open Doors to the Federal Courts, Canterbury School, Fort Myers, Florida. Presentation slides supplied.

October 27, 2010: Leadership Lee County presentation, *An Introduction to the Federal System*. I used the same slides as those supplied for the February 8, 2011 event.

October 8, 2010: Twentieth Judicial Circuit presentation, *The Paperless Highway*. I used the same slides as those supplied for the March 25, 2011 event.

September 24, 2010: Swearing in of Ave Maria Law School students. Notes supplied.

September 14-17, 2010: Chambers IT Train the Trainer, Federal Judicial Center and the Administrative Office of the U.S. Courts, Chicago, Illinois. Curriculum handout supplied.

August 4-6, 2010: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. Curriculum handouts and presentation slides supplied.

July 12-16, 2010: Chambers IT Train the Trainer, Federal Judicial Center and the Administrative Office of the U.S. Courts, Seattle, Washington. Curriculum handouts and presentation slides supplied.

May 19-21, 2010: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I used the same handouts as those supplied for the August 4-6, 2010 event.

May 14, 2010: Charlotte County Bar Association, *Law Day 2010*. Presentation slides supplied.

April 20-23, 2010: Chambers IT Train the Trainer, Federal Judicial Center and the Administrative Office of the U.S. Courts, Boston, Massachusetts. Presentation slides and handout supplied.

March 16, 2010: Calusa Inn of Court presentation, *Inns of Court Feud: Social Media*, Fort Myers, Florida. Presentation slides supplied.

March 10-12, 2010: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I used the same handouts as those supplied for the August 4-6, 2010 event.

February 11, 2010: Open Doors to the Federal Courts presentation, Canterbury School, Fort Myers, Florida. I used the same slides as those supplied for the February 8, 2011 event.

September 20-26, 2009: Training for Chambers IT Trainers, Federal Judicial Center and the Administrative Office of the U.S. Courts, Denver, Colorado. Presentation slides supplied.

September 21, 2009: Industry Day Courtroom Technology Conference and Roundtable. Court personnel related their experience with technology in the courtroom. I was a member of a discussion panel. I have no notes, transcripts, or recordings. The address for the U.S. District Courthouse is 901 19th Street, Denver, Colorado 81303.

August 31, 2009: Advanced Computer Skills for Judges, Federal Judicial Center, Washington, D.C. Presentation slides supplied.

August 12-14, 2009: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. Curriculum handout and presentations slides supplied.

July 16, 2009: Advanced Computer Skills for Judges, Federal Judicial Center, Milwaukee, Wisconsin. Handouts supplied.

May 7, 2009: Open Doors to the Federal Courts, Saint Francis Xavier Eighth Grade Class, *Social Justice*. Presentation slides supplied.

March 31, 2009: Open Doors to the Federal Courts, South Fort Myers High School Criminal Justice Academy, Fort Myers, Florida. Case outline supplied.

March 26, 2009: Bishop Verot High School Career Day presentation, *The Federal Magistrate Judge*. I described the duties of a Federal Magistrate Judge during breakout sessions with high school students during career day. I have no notes, transcripts, or recordings. The address for Bishop Verot Catholic High School is 5598 Sunrise Drive, Fort Myers, Florida 33919.

March 4-6, 2009: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I used the same handouts and slides as those supplied for the August 12-14, 2009 event.

February 10, 2009: Open Doors to the Federal Courts presentation, Canterbury School, Fort Myers, Florida. Presentation slides supplied.

January 2009: I was filmed by the Federal Judicial Center in an informative training video for the federal judiciary entitled *Remote Access for Judges*. Video provided.

September 16, 2008: Joint Meeting of the Thomas S. Biggs Inn of Court and the Calusa Inn of Court: *Advance Sheet*, Fort Myers, Florida. Presentation slides supplied.

June 2, 2008: Keynote Speaker for the Commencement of the Kiel High School class of 2008. *Oh the Places You Will Go*. Speech supplied.

May 13, 2008: St. Francis Xavier School. Wrote and presented mock trial on criminal mischief for Saint Francis Xavier Third Grade. I have no notes, transcripts, or recordings. The address for Saint Francis Xavier School is 2055 Heitman Street, Fort Myers, Florida 33901.

March 18, 2008: Calusa Inn of Court presentation. *Last One Standing*. Presentation slides supplied.

February 13, 2008: Open Doors to the Federal Courts, Canterbury School, Fort Myers, Florida. Presentation slides supplied.

July 10, 2008: National Workshop for U.S. Magistrate Judges Break-Out Session, Seattle, Washington, *Improving Communications Through Technology*. Presentation slides and written materials supplied.

August 2007: Calusa Inn of Court presentation. *Getting to Know You, An Introduction of the New Members*. Pupilage group created a presentation to introduce the new members of the Inn to the existing membership. I have no notes, transcripts, or recordings. The address for Calusa Inn of Court is 12239 Championship Circle, Fort Myers, Florida 33913.

March 23, 2007: Open Doors to the Federal Courts, South Fort Myers High School Criminal Justice Academy. I used the same case outline as that supplied for the March 31, 2009 event.

March 14-16, 2007: New Magistrate Judge IT Orientation, Federal Judicial Center and the Administrative Office of the U.S. Courts, San Antonio, Texas. I have no notes, transcript, or recording, but the presentation slides are similar to those used for the 2009 New Magistrate Judge IT Orientation in San Antonio, which are supplied above. The address of the FJC is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

March 8, 2007: Saint Francis Xavier School presentation, *Social Justice*. Presentation slides supplied.

December 5, 2006: Eleventh Judicial Circuit Conference Meeting, *IT Tips for Judges*. I taught the judges at the meeting how to use various computer tools. I have no notes, transcripts, or recordings. The address for The Hilton-Key West is 245 Front Street, Key West, Florida 33040.

September 19, 2006: Joint Meeting of Lee and Collier County American Inns of Court, *Meet the New Judges of the Twentieth Judicial Circuit*. My pupilage group prepared a presentation to introduce the newly elected judges of the court. I have no notes, transcripts, or recordings. The address for Calusa Inn of Court is 12239 Championship Circle, Fort Myers, Florida 33913.

Annually 2006 – 2009: Gateway Charter School presentation, *The Constitution*. Presentation slides supplied.

September 15, 2005: Board of Judges Meeting, Middle District of Florida, *Learning Through Information Sharing*. Presentation slides supplied.

February 18, 2004: Florida Association of Women Lawyers, *CM/ECF, the Paperless Highway*. I made a presentation to attorneys and judges on the implementation of the Court Management, Electronic Court Filing system. I have no notes, transcripts, or recordings. The address for the Collier County Bar Association is 3301 Tamiami Trail East, Building L, Naples, Florida 34112.

2004: Lee County Bar Association presentation, *The Implementation of CM/ECF in the Federal System*. I made a presentation to attorneys and judges on the implementation of the Court Management, Electronic Court Filing system. I have no notes, transcripts, or recordings. The address for the Lee County Bar Association is Box 1387, Fort Myers, Florida 33902.

2004 – 2007: Gateway Charter School presentation, *Tell It to the Judge*. I taught sixth grade students about the civil process. Students participated in mock trials. I have no notes, transcripts, or recordings. The address for Gateway Charter School is 12850 Commonwealth Drive, Fort Myers, Florida 33913.

July 30, 2003: Investiture of the Honorable Sheri Polster Chappell as a federal magistrate judge. Copy of speech provided.

2003: Federal Bar Association, Middle District of Florida, Fort Myers Division presentation, *Expectations from the Bench*. I participated in a question and answer session regarding my preferences as a new member of the bench. I have no notes, transcripts, or recordings. The address for the Federal Bar Association is 2110 First Street, Fort Myers, Florida 33901.

2003: Cape Coral Bar Association presentation, *Expectations from the Bench*. I participated in a question and answer session from attorneys regarding my preferences as a new member of the bench. I have no notes, transcripts, or



recordings. The address for Cape Coral Bar Association is 4223 Del Prado Boulevard South, Cape Coral, Florida 33904.

May 2001: Law Week presentation, *The Job of a County Court Judge*. I lectured grade school children on the duties of a county court judge. I have no notes, transcripts, or recordings. The address for the Lee County Justice Center is 1700 Monroe Street, Fort Myers, Florida 33901.

June 8, 2000: Investiture of the Honorable Sheri Polster Chappell as a Judge for the Lee County Court. I have no notes, transcripts, or recordings. The address for the Lee County Justice Center is 1700 Monroe Street, Fort Myers, Florida 33901.

2000: Southwest Florida Criminal Justice Academy, Graduation Speech, 76th Corrections Class. I have no notes, transcripts, or recordings. The address for the Southwest Florida Public Service Academy is 4312 Michigan Avenue, Fort Myers, Florida 33905.

2000 – 2009: I have judged roughly nine rounds of mock trial competitions for the Lee County High School Mock Trial Competition, and the Twentieth Judicial Circuit High School Mock Trial Competition. I served as the presiding judge and offered evaluations and comments at the end of the rounds. I have no notes, transcripts, or recordings. The address for the Lee County Justice Center is 1700 Monroe Street, Fort Myers, Florida 33901 and the address for the United States Courthouse is 2110 First Street, Fort Myers, Florida 33901.

2000 – 2009: I developed, wrote, and presided over mock trials for students of various ages, their teachers, and chaperones for courthouse visits. Mock trial scripts supplied.

2000 – 2004: Teen Court. I served as a presiding judge over Teen Court cases. I have no notes, transcripts, or recordings. The address for Teen Court is Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901.

2000 – 2003: I presented *County Court, The People's Court* to various grade schools, middle schools, and high schools. I discussed the job of a county court judge with school aged children. I have no notes, transcripts, or recordings. The address for the Lee County Justice Center is 1700 Monroe Street, Fort Myers, Florida 33901.

1998: Florida Gulf Coast University ("FGCU") presentation, *Forensic Science in the Courtroom*. I lectured FGCU students on the use of serology, fingerprints, ballistics, and DNA evidence for trial. I have no notes, transcripts, or recordings. The address for Florida Gulf Coast University is 10501 FGCU Boulevard, South Fort Myers, Florida 33965.

1997: Florida Gulf Coast University Police Department. During FGCU's inception, I lectured the University's Police Department on the topics of creating case reports, warrants, booking sheets, and lectured on specific crimes common to the University community. I relied upon the Florida Statutes as a guide for the presentation. I have no notes, transcripts, or recordings. The address for Florida Gulf Coast University is 10501 FGCU Boulevard, South Fort Myers, Florida 33965.

1997: Phoenix Center. I lectured nurse practitioners, who worked at the Phoenix Center, a facility for victims of sexual battery, on how to prepare a statement regarding their treatment of the victims and how to convey their findings in testimony at a hearing and/or trial. I have no notes, transcripts, or recordings. The address for the Phoenix Center is P.O. Box 6548, Fort Myers, Florida 33911.

1990 – 2003: Office of the State Attorney, Twentieth Judicial Circuit. As a senior attorney, I trained new attorneys on trial tactics, preparation, and execution of various parts of the trial. I have no notes, transcripts, or recordings. The address for the State Attorney's Office is Lee County Justice Center Complex, 2000 Main Street, 6th Floor, Fort Myers, Florida 33901.

1990 – 2000: Southwest Florida Criminal Justice Academy. As an instructor, I taught law enforcement recruits Legal I, II, and III, and how to apply the law to their duties. I also taught recruits at the Corrections Academy Legal I and II, and general criminal law and procedure at the Auxiliary Law Enforcement Academy. I taught Advanced Incentives Courses in search and seizure, domestic violence, sexual battery and sex crimes, courtroom demeanor and testimony, and advanced legal studies. I also taught prison officials and guards from Charlotte Correctional Institute and Glades County Correctional Facility how to apply the law to crimes committed by individuals while in custody. I utilized the Criminal Justice Standards and Training Commission's Curriculum applicable for each year, and supplemented it with statutory and case law authority. I have no notes, transcripts, or recordings. The address for the Southwest Florida Criminal Justice Academy is 4312 Michigan Avenue, Fort Myers, Florida 33905.

1989 – 1990: Florida Prosecuting Attorneys Association (FPAA). I lectured on trial preparation and the topics of *voir dire*, direct, and cross examination. After lecturing, I also critiqued the new attorneys attending the FPAA DUI Trial Tactics Seminar. I have no notes, transcripts, or recordings. The address for the Florida Prosecuting Attorneys Association, Inc. is 107 West Gaines Street, Suite L-066, Tallahassee, Florida 32399.

1987 – 2009: Lee County Bar Association. On various occasions I spoke to students during Law Week regarding my positions as an Assistant State Attorney, County Court Judge, and Federal Magistrate Judge. I have no notes, transcripts, or recordings. The address for the Lee County Bar Association is P.O. Box 1387, Fort Myers, Florida 33902.

1987 – 2000: New Laws Seminar. I lectured local law enforcement agencies and other assistant state attorneys on the new criminal laws enacted during the legislative session. I have no notes, transcripts, or recordings. The address for the Lee County Justice Center is 1700 Monroe Street, Fort Myers, Florida 33901.

As an Assistant State Attorney, County Court Judge, and United States Magistrate Judge, I have often been called upon to speak with visiting groups about the justice system. I have also administered oaths of office, and conducted courthouse tours. I have not maintained records of all of these events, but have tried to create as complete a list as possible by searching my personal records, public databases, and the internet. Despite these efforts, however, there may be other remarks or presentations that I have been unable to recall or identify. The addresses of the various locations where I conducted these talks are: Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901; Charlotte County Justice Center, 513 East Marion Avenue, Punta Gorda, Florida 33950; and the United States Courthouse and Federal Building, 2110 First Street, Fort Myers, Florida, 33901.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Don Manley, *Court Opens Its Doors to High Schoolers*, NEWS-PRESS, Mar. 31, 2007. Copy supplied.

Carl Conley, *Following Her Dream*, GULF COAST WOMAN, Aug. 2000 at 10. Copy supplied.

Patricia Walsh, *Chappell Appointed to Lee County Bench*, SARASOTA HERALD-TRIBUNE, Mar. 17, 2000 at 3B. Copy supplied.

Patricia Walsh, *Driver Cleared in Bike Fatality*, SARASOTA HERALD-TRIBUNE, Oct. 19, 1999 at 1A. Copy supplied.

Scott Carroll, *Police: Evidence Lacking in Hit and Run*, SARASOTA HERALD-TRIBUNE, Oct. 6, 1999 at 1A. Copy supplied.

Patricia Walsh, *Suspect Indicted in Slaying of Teen*, SARASOTA HERALD-TRIBUNE, Aug. 13, 1999 at 1B. Copy supplied.

Matthew Henry, *Prosecutors Reduce Teen's Charge*, SARASOTA HERALD-TRIBUNE, Aug. 3, 1999 at 1B. Copy supplied.

Matthew Henry and Patricia Walsh, *Teen Pleads Guilty in Stomping*, SARASOTA HERALD-TRIBUNE, June 9, 1999 at 1B. Copy supplied.

Patricia Walsh, *Deep Creek Teen Gets Life for '97 Slaying*, SARASOTA HERALD-TRIBUNE, Apr. 28, 1999 at 1B. Copy supplied.

Patricia Walsh, *Meynard Convicted of Dentist's Slaying*, SARASOTA HERALD-TRIBUNE, Apr. 27, 1999 at 1A (reprinted in multiple outlets). Copy supplied.

Vanessa Bauza, *Father of Missing Girl Turns to Ryce Family*, SOUTH FLORIDA SUN-SENTINEL, Mar. 13, 1999 at 6B. Copy supplied.

Mike Nemeth, *Prosecuting Chief Praised After First Year*, CHARLOTTE SUN HERALD, Feb. 14, 1999 at 1. Copy supplied.

Patricia Walsh, *Mother Pleas No Contest to Abuse, Neglect of Child*, SARASOTA HERALD-TRIBUNE, Feb. 10, 1999 at 1B. Copy supplied.

Matthew Henry, *Police Accused in Beating of Man*, SARASOTA HERALD-TRIBUNE, Nov. 20, 1998 at 1B. Copy supplied.

*Mother Who Missed Date in Court Turns Herself In*, SARASOTA HERALD-TRIBUNE, Oct. 20, 1998 at 3B. Copy supplied.

Matthew Henry, *Brutally Beaten Teen Remains in Coma*, SARASOTA HERALD-TRIBUNE, Oct. 11, 1998 at 1A. Copy supplied.

Patricia Walsh, *Mother's Child Abuse Trial to Begin*, SARASOTA HERALD-TRIBUNE, Oct. 5, 1998 at 1B. Copy supplied.

Patricia Walsh, *New Prosecutor Heads Charlotte*, SARASOTA HERALD-TRIBUNE, Sept. 19, 1998 at 1B. Copy supplied.

Associated Press, *Sentence Overturned after Error*, SOUTH FLORIDA SUN-SENTINEL, Oct. 7, 1995 at 27A (reprinted in multiple outlets). Copy supplied.

Mitch McKenney, *Gunman in Murder Sentenced to Death*, PALM BEACH POST, Dec. 16, 1992 at 1A. Copy supplied.

Mitch McKenney, *Man Convicted of Glades County Millionaire's Murder*, PALM BEACH POST, Nov. 20, 1992 at 1B. Copy supplied.

Mitch McKenney, *Witness: 'I Tried Not to Breathe' after Shots*, PALM BEACH POST, Nov. 5, 1992 at 1B. Copy supplied.

Mitch McKenney, *Two Consider Plea Deals in Murder of Millionaire*, PALM BEACH POST, July 21, 1992 at 1B. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

April 10, 2000 – April 18, 2003: Lee County Court Judge, Twentieth Judicial Circuit. I was appointed to the position of Lee County Court Judge by Governor Jeb Bush. Because I was appointed to fill a mid-term vacancy, my position came up for election in 2002. I was elected without opposition to serve a six-year term in May 2002. I resigned my position as Lee County Court Judge on April 18, 2003, due to my selection and appointment as a United States Magistrate Judge for the Middle District of Florida. Jurisdiction of the county court is established by Fla. Stat. § 34.01 and extends to all misdemeanor cases not cognizable by the circuit courts, all violations of municipal and county ordinances, civil disputes involving \$15,000 or less, and disputes occurring in the homeowners' associations. My duties included the disposition of criminal, civil, small claims, traffic, and domestic violence matters.

April 21, 2003 – present: United States Magistrate Judge, United States District Court for the Middle District of Florida, Fort Myers Division. I was appointed by the court on April 21, 2003. I was reappointed to serve a second eight-year term in April 2011. A Magistrate Judge's jurisdiction is derived primarily from the Federal Magistrates Act of 1968 (28 U.S.C. §§ 631-636). In the Middle District of Florida, United States Magistrate Judges are given substantial authority to handle a wide range of criminal and civil cases.

As a Magistrate Judge assisting with the criminal docket, I preside over preliminary matters including initial appearances, arraignments, detention hearings, and discovery hearings. I am also responsible for conducting evidentiary hearings on dispositive motions such as motions to suppress in which a report and recommendation is submitted to the District Court concerning disposition. Additionally, I review and issue search warrants for persons and/or property, conduct proceedings on felony guilty pleas, misdemeanor trials, and sentence misdemeanor defendants. Magistrate Judges are also responsible for conducting hearings and trials in Central Violations Bureau cases.

In assisting with the civil docket, I rule on a broad variety of non-dispositive motions based upon the written pleadings submitted by the parties, including discovery motions, preliminary pretrial matters, motions to withdraw, motions regarding amendments to pleadings, and motions to strike. Additionally, I am required to handle dispositive issues referred by the District Court, including motions to dismiss, motions for summary judgment, and motions for attorney's fees for which a report and recommendation is prepared. Upon consent of the parties, I preside over the case from its inception to its disposition. I also handle prisoner litigation cases, habeas corpus cases filed pursuant to 28 U.S.C. § 2255, social security administrative appeals, ERISA cases, and IDEA cases. As a Magistrate Judge, I have been called upon by the District Court judges to conduct numerous settlement conferences in civil cases, including prisoner litigation.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 519

i. Of these, approximately what percent were:

jury trials:	12%
bench trials:	88%
civil proceedings:	56%
criminal proceedings:	44%

b. Provide citations for all opinions you have written, including concurrences and dissents.

As a Lee County Court Judge I did not write any published opinions. I did, however, enter hundreds of written orders. All are maintained in case files by the Clerk of Court. The vast majority are routine orders without findings of fact or legal analysis, or docket orders prepared for me by the clerk's office following my oral rulings. These orders are also filed with the Clerk of Court. Because they are not published, I cannot provide citations for them without reviewing each and every case file.

As a United States Magistrate Judge, I prepare Reports and Recommendations on dispositive matters referred to me by the District Judges of this Court, who remain the presiding judge in the case. I also prepare orders on motions referred to me, which are not dispositive. From time to time, parties will consent to my jurisdiction. When I am the presiding judge, I do not prepare Reports and Recommendations. Instead, I enter orders for all motions adjudicated in the case. I am attaching a list of the Reports and Recommendations that I have prepared for matters that have been referred to me by the District Judges of this Court as well as orders I have entered when acting as the presiding judge. See attached lists.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Royal Marco Point I Condo. Ass'n v. QBE Ins. Corp.*, No. 2:07-cv-16-99SPC, 2011 WL 470561 (M.D. Fla. Feb. 2, 2011); 2010 WL 5161111 (M.D. Fla. Dec. 14, 2010); 2009 WL 1592270 (M.D. Fla. Jan. 16, 2009); 2008 WL 4194792 (M.D. Fla. Aug. 8, 2008). Plaintiff filed a bad faith claim against defendant insurance carrier for failing to pay its claims in full and in a timely manner following hurricane damages. I was given significant responsibility over this case, which was on the unassigned docket. I entered numerous

discovery orders and Reports and Recommendations on disputed issues and ultimately settled the case after significant involvement.

Counsel for Plaintiff: Richard Hugh Lumpkin  
Ver Ploeg & Lumpkin, PA  
100 Southeast Second Street, 30th Floor  
Miami, FL 33131  
(305) 577-3996

Counsel for Defendant: William Stewart Berk  
Berk, Merchant & Sims, PLC  
2 Alhambra Plaza, Suite 700  
Coral Gables, FL 33134  
(786) 338-2851

2. *Scott v. Lee Cnty. Sch. Bd.*, No. 2:03-cv-246-SPC (M.D. Fla. Aug. 19, 2004). Plaintiff, who worked as a Safety Director for defendant, brought this action pursuant to 42 U.S.C. § 1983, claiming the violation of his constitutional rights under the Fourteenth and Ninth Amendments. He further brought suit pursuant to Florida's Whistle Blower Act. I conducted the final pre-trial conference and all trial preparation and presided over a five-day jury trial by consent of the parties, which resulted in a verdict for the plaintiff. After verdict but prior to any appellate action, the parties settled. A copy of my summary judgment opinion in this case is supplied.

Counsel for Plaintiff: Patrick E. Geraghty  
Geraghty, Dougherty & Edwards, PA  
1531 Hendry Street  
Fort Myers, FL 33901  
(239) 334-9500

Counsel for Defendant: Thomas M. Gonzalez  
Thompson, Sizemore, Gonzalez & Hearing, PA  
201 North Franklin Street, Suite 1600  
Tampa, FL 33602  
(813) 273-0050

3. *United States v. Ulrich*, No. 2:05-cr-130-SPC (M.D. Fla. 2006). I presided over this criminal misdemeanor case. The defendant was charged with taking a bald eagle's nest without permission and with wanton disregard for the consequences of his actions. I decided a motion *in limine*, conducted status conferences, and presided over a three-day jury trial which resulted in a defense verdict. Given the nature of this matter I have no written opinions to provide.

Counsel for Prosecution: Yolande G. Viacava  
 United States Attorney's Office  
 United States Courthouse and Federal Building  
 2110 First Street, Room 3-137  
 Fort Myers, FL 33901  
 (239) 461-2200

Counsel for Defendant: Richard D. Lakeman  
 P.O. Box 101580  
 Cape Coral, FL 33910  
 (239) 458-8190

4. *Reliable Salvage and Towing, Inc. v. 35' Sea Ray*, No. 2:09-cv-329-SPC, 2011 WL 1058863 (M.D. Fla. Mar. 21, 2011); 2011 WL 5418891 (M.D. Fla. June 13, 2011); 2011 WL 2173842 (M.D. Fla. June 2, 2011); 2011 WL 2038576 (M.D. Fla. May 20, 2011); *aff'd*, 2012 WL 1867166 (11th Cir. May 23, 2012). Plaintiff alleged that the defendant never paid for the salvage services rendered by plaintiff in order to tow defendant's boat to safety. I presided over this case by consent of the parties. The case proceeded to a bench trial. Based upon the evidence heard at trial and the memoranda of law submitted by the parties, I issued Findings of Fact and Conclusions of Law and entered Judgment in favor of the plaintiff. The Eleventh Circuit affirmed the decision.

Counsel for Plaintiff: Frank D. Butler  
 Law Offices of Frank D. Butler, PA  
 10550 U.S. Highway 19 North  
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Counsel for Defendant: David F. Pope  
 Banker Lopez Gassler  
 501 East Kennedy Boulevard, Suite 1500  
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5. *DJM, Ltd. v. Island Yachting Mgmt., Inc.*, No. 2:02-cv-617-SPC (M.D. Fla. Mar. 23, 2004), *aff'd*, 132 F. App'x 246 (11th Cir. 2005), *cert. denied*, 546 U.S. 938 (2005). Plaintiff alleged negligence, fraudulent misrepresentation, breach of the implied warranty of merchantability, deceptive trade practices, strict liability in tort, and money owed for damage to the ship's air conditioning unit. I presided over this case by consent of the parties. All of the claims were resolved in favor of the defendant at the summary judgment stage, except for an alleged promise by the defendant to pay for damages caused by the vessel's faulty air conditioning unit. This issue went to a jury trial and a verdict was rendered in favor of the defendant. The Eleventh



Circuit affirmed the jury's verdict. A copy of my summary judgment opinion in this case is supplied.

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Counsel for Defendant: John Lakin  
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6. *Every Penny Counts, Inc. v. Bank of America Corp.*, No. 2:07-cv-42-29SPC, 2009 WL 6853402 (M.D. Fla. May 27, 2009); 2008 WL 4491248 (M.D. Fla. July 3, 2008). In this patent case, plaintiff alleged that the defendant's Keep the Change program infringed on its patent. As the magistrate judge, I presided over a complex and continuous discovery process and held a *Markman* hearing on claim construction. I subsequently issued a Report and Recommendation which was accepted in part, rejected in part, and modified in part regarding the definitions of the disputed claim terms. Summary judgment was ultimately issued in favor of the defendant.

Counsel for Plaintiff: Brent B. Barriere  
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Counsel for Defendant: Anat Hakim  
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7. *United States v. Derisma*, No. 2:09-cr-64-29SPC, 2012 WL 537553 (M.D. Fla. Feb. 18, 2012); 2012 WL 749405 (M.D. Fla. Mar. 8, 2012); 2011 WL 3878367 (M.D. Fla. June 27, 2011); 2011 WL 3878359 (M.D. Fla. Sept. 2, 2011). This is a criminal case in which I presided over a three-day competency hearing and issued a Report and Recommendation on defendant's competency to stand trial. I also presided over days of testimony on motions to suppress and issued a Report and Recommendation to the District Court.

Defendant ultimately pled guilty to all charges and is set to be sentenced in July.

Counsel for Prosecution: Tama Caldarone  
United States Attorney's Office  
United States Courthouse and Federal Building  
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Counsel for Defendant: David Allen Brener  
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8. *Coastal Conservation Ass'n v. Locke*, No. 2:09-cv-641-29SPC, 2011 WL 4530631 (M.D. Fla. Aug. 16, 2011); 2011 WL 4530544 (M.D. Fla. Sept. 29, 2011); 2010 WL 1439071; 2010 WL 1407681 (M.D. Fla. Jan. 19, 2010). The plaintiffs alleged that the defendants did not follow the proper procedures as delineated in the Administrative Procedures Act, the National Environmental Policy Act, the Regulatory Flexibility Act, and the Magnuson-Stevens Act in promulgating fishing quotas in the Gulf of Mexico. I entered preliminary orders. Based upon the party's cross motions for summary judgment and review of the record before the administrative agency, I issued a Report and Recommendation affirming the decision of the Agency and denying the plaintiffs' respective motions for summary judgment. The District Court supplemented and adopted my Report and Recommendation.

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Counsel for Defendants: Mark Arthur Brown  
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United States Courthouse and Federal Building  
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9. *McCarthy v. Sherwin-Williams Co.*, No. 2:05-cv-61-SPC. I presided over this slip and fall personal injury case by consent of the parties and entered preliminary orders regarding discovery. I conducted the final pre-trial conference and all trial preparation. Prior to trial, defendant made several pretrial motions *in limine* which I granted based upon the newly-discovered medical evidence that was previously hidden by the plaintiff from the court and counsel. The plaintiff then elected to discharge her counsel and orally moved to dismiss the case without prejudice, which was granted. However, costs were imposed upon the plaintiff.

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Joseph R. Gaeta, PA  
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Counsel for Defendant: Kenneth L. Bednar  
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1200 East Las Olas Boulevard, Suite 500  
Fort Lauderdale, FL 33301  
(954) 703 3900

10. *Sch. Bd. of Lee Cnty., Fla. v. M.M. and J.M. on behalf of a minor M.M. II*, No. 2:05-cv-5-29SPC (M.D. Fla. Mar. 17, 2006), *aff'd*, 348 F. App'x 504 (11th Cir. 2009). I presided as the magistrate judge in this record review case brought pursuant to the Individuals with Disabilities Education Act, in which the school board appealed the ALJ's determination to this Court. After I reviewed the record, and the parties' memoranda of law and briefs, I issued a Report and Recommendation recommending that judgment be entered in favor of the school board and that the decision of the ALJ be reversed. The District Court adopted the Report and Recommendation and dismissed the case leaving only Count VIII, a state action claim for malicious prosecution. The Eleventh Circuit affirmed the decision regarding counts I, II, III, IV, V, VI, VII, and IX, and vacated the determination dismissing Count VIII. The

malicious prosecution claim was subsequently dismissed and remanded to State Court. The Report and Recommendation entered in this case is supplied.

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Counsel for Defendant: Paul E. Liles  
Disability Rights Florida, Inc.  
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Tampa, FL 33602  
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Schneider v. Walgreen, Co.*, No. 2:10-cv-139-29SPC (M.D. Fla. Sept. 21, 2010). Copy supplied.

Counsel for Plaintiff: Bruce A. Tischler  
Greene & Tischler, PA  
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Counsel for Defendant: Gregory Alan Hearing  
Thompson, Sizemore, Gonzalez & Hearing, PA  
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2. *United States v. Derisma*, No. 2:09-cr-64-29SPC (M.D. Fla. Dec. 9, 2011). Copy supplied.

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Counsel for Defendant: David Allen Brener  
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3. *Reliable Salvage and Towing, Inc. v. 35' Sea Ray*, No. 09-cv-329-SPC, 2011 WL 1058863 (M.D. Fla. Mar. 21, 2011).

Counsel for Plaintiff: Frank D. Butler  
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Counsel for Defendant: David F. Pope  
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4. *Every Penny Counts, Inc. v. Bank of America Corp.*, No. 07-cv-42-29SPC, 2008 WL 4491248 (M.D. Fla. July 3, 2008).

Counsel for Plaintiff: Brent B. Barriere  
Eric Robert Pellenbarg  
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Counsel for Defendant: Anat Hakim  
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Post Office Box 2193  
Orlando, FL 32802  
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5. *Coastal Conservation Ass'n v. Locke*, No. 2:09-cv-641-29SPC, 2011 WL 4530631 (M.D. Fla. Aug. 16, 2011).

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Kyle Scott Cohen  
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6. *Conservancy of Southwest Fla. v. United States Fish and Wildlife Serv.*, No. 10-cv-106-29SPC, 2010 WL 51408729 (M.D. Fla. Nov. 11, 2010).

Counsel for Plaintiff: Jonathan Etra  
Broad and Cassel  
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Counsel for Defendant: Jonathan Galler  
Proskauer Rose, LLP  
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7. *United States v. Sereme*, No. 2:11-cr-97-29SPC (M.D. Fla. Mar. 27, 2012).  
Copy supplied.

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Counsel for Defendant: Russell K. Rosenthal  
Federal Public Defenders Office  
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Fort Myers, FL 33901  
(239) 334-0397

8. *Dunn-Fischer v. Dist. Sch. Bd. of Collier Cnty.*, No. 2:10-cv-512-29SPC, 2011 WL 4632568 (M.D. Fla. Aug. 30, 2011).

Counsel for Plaintiff: Terry L. Dunn-Fischer  
Pro-Se  
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(239) 298-1154

Counsel for Defendant: Jonathan D. Fishbane  
Collier County School District  
5775 Osceola Trail  
Naples, FL 34109  
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9. *United States v. Sharma*, No. 08-cr-69-29SPC (M.D. Fla. Nov. 20, 2008).  
Copy supplied.

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Counsel for Defendant: Ray Christopher Lopez  
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10. *PC Connector Solutions LLC v. SmartDisk Corp.*, No. 2:00-cv-539-29SPC (M.D. Fla. Oct. 01, 2003). Copy supplied.

Counsel for Plaintiff: Jonathon H. Steinberg  
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Counsel for Defendant: Joseph A. Rhoa  
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Arlington, VA 22201  
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- e. Provide a list of all cases in which certiorari was requested or granted.

I know of no cases in which certiorari was granted. Certiorari was requested and denied in *DJM, Ltd. v. Island Yachting Mgmt., Inc.*, No. 2:02-cv-617-SPC (M.D. Fla. Mar. 23, 2004), *aff'd*, 132 F. App'x 246 (11th Cir. 2005), *cert. denied*, 546 U.S. 938 (2005).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *United States v. Moore*, No. 2:06-cr-8-29SPC (M.D. Fla. Apr. 21, 2006); *rejected in part*, 2006 WL 1232811 (M.D. Fla. May 5, 2006). In a Report and Recommendation on a motion to suppress, I concluded that a mere passenger in a vehicle lacked standing to challenge the stop of the vehicle, determined that the traffic stop and subsequent detention were lawful, and recommended the motion to suppress be denied. The District Court disagreed with the standing portion, however agreed with my analysis of the lawfulness of the stop, concluding that the defendant had standing to challenge the stop of the vehicle. The District Court adopted the remaining portions of the Report and Recommendation and denied defendant's motion to suppress. The Report and Recommendation is supplied.

2. *United States v. Zaldivar*, No. 2:06-cr-50-29SPC (M.D. Fla. July 18, 2005); *accepted and adopted in part, rejected in part*, 2006 WL 2947827 (M.D. Fla. Oct. 16, 2006), *vacated in part on rehearing*, 2006 WL 3335060 (M.D. Fla. Nov. 16, 2006), *aff'd*, 292 F. App'x 868 (11th Cir. 2008). In a Report and Recommendation on a motion to suppress, I concluded that the impoundment and inventory search of the vessel was lawful, that defendant consented to the search, that there was probable cause to issue a warrant, and that the seizure of latent prints at the scene was within the scope of the warrant. The District Court disagreed, holding that the inventory search was unlawful and that the prints were



not lawfully seized. The District Court accepted and adopted the Report and Recommendation in all other respects. On reconsideration, the District Court determined that the prints were properly seized pursuant to the plain view exception to the warrant requirement.

3. *United States v. Flores*, No. 2:08-cr-108-29SPC (M.D. Fla. Dec. 8, 2008), *accepted and adopted in part, rejected in part*, 2009 WL 55022 (M.D. Fla. Jan. 7, 2009), *aff'd*, 380 F. App'x 921 (11th Cir. 2010). In a Report and Recommendation on a motion to suppress, I concluded that because the exigent circumstances were caused by the officers and the officers had time to obtain an anticipatory search warrant, the search of the residence was unlawful. The District Court disagreed, concluding that the exigent circumstances were caused by the suspects and the officers did not have probable cause to obtain an anticipatory search warrant. Since the District Court found that the search was lawful, it rejected the Report and Recommendation's findings on remaining issues that were based on the taint of the illegal search. The District Court accepted and adopted the Report and Recommendations in all other respects. The Report and Recommendation is supplied.

4. *United States v. Estrella*, No. 2:11-cr-40-29SPC (M.D. Fla. Sept. 12, 2011), *rejected*, 2011 WL 4946907 (M.D. Fla. Oct. 17, 2011). Even though I held an evidentiary hearing on defendant's motion to suppress, on one issue in my Report and Recommendation I concluded that a further evidentiary hearing was not required because the motion did not make a threshold showing of collusion between state and federal authorities. Defendant had not raised the argument regarding collusion in his motion to suppress. The District Court disagreed and did not accept or adopt the Report and Recommendation because it was not based upon an evidentiary hearing. The Report and Recommendation and District Court Order are supplied.

5. *United States v. Bergin*, No. 2:09-cr-75-29SPC, 2010 WL 3088471 (M.D. Fla. Mar. 26, 2010), *accepted and adopted in part, rejected in part*, 732 F. Supp. 2d 1235 (M.D. Fla. 2010). In a Report and Recommendation on a motion to suppress, I concluded that a safe that was seized from the residence should not be suppressed. The District Court disagreed, concluding that the third entry into the residence during which knowledge and the existence of the safe was obtained was unlawful. Therefore the District Court concluded the safe should be suppressed. The District Court affirmed the Report and Recommendation in all other respects.

6. *Warfield v. Stewart*, 2:07-cv-332-VMC (M.D. Fla. Nov. 2, 2009), *accepted and adopted* 2010 WL 731792 (M.D. Fla. Feb. 26, 2010), *rev'd*, 434 F. App'x 777 (11th Cir. 2011). In a Report and Recommendation on a motion for award of attorney's fees and costs, I concluded that attorney's fees should be awarded and expenses partially awarded to the prevailing parties under the provision of the contract for a sale of property. The District Court agreed, and accepted and adopted the Report and Recommendation. On appeal, the Eleventh Circuit

reversed, finding that defendants were not entitled to attorney's fees under the brokerage agreement.

7. *Leonard v. Comm'r of Soc. Sec.*, 2:05-cv-499-34SPC, 2009 WL 5908804 (M.D. Fla. Oct. 8, 2009), *accepted in part, rejected in part*, 2010 WL 680732 (M.D. Fla. Feb. 23, 2010). In a Report and Recommendation on a motion for attorney's fees under the Equal Access to Justice Act, I concluded that because defendant's position was substantially justified under the statute, an award of attorney's fees to plaintiff was not proper. The District Court disagreed in part, concluding that even if the defendant's position is substantially justified, the plaintiff is still entitled to the recovery of costs.

8. *Guevara v. Shutter-Man Storm & Sec., Inc.*, No. 2:06-cv-511-29SPC, 2008 WL 2474269 (M.D. Fla. May 13, 2008), *accepted in part, rejected in part*, 2008 WL 2474569 (M.D. Fla. June 16, 2008). In a Report and Recommendation on a motion for relief from judgment, default judgment, amended judgment, and underlying orders, I concluded that the motion should be denied because service of process was proper. The District Court disagreed, finding that an evidentiary hearing should be conducted due to conflicting affidavits.

9. *Every Penny Counts, Inc. v. Bank of America Corp.*, No. 2:07-cv-42-29SPC, 2008 WL 4491248 (M.D. Fla. July 3, 2008), *accepted in part, rejected in part, and modified in part*, 2008 WL 4491113 (M.D. Fla. Sept. 29, 2008). In a Report and Recommendation after conducting a *Markman* hearing regarding claim construction issues, I recommended the construction to be given to five disputed terms. The District Court disagreed with certain definitions but otherwise accepted the Report and Recommendation.

10. *United States v. Bowlby*, No. 2:07-cv-606-34SPC, 2008 WL 3245469 (M.D. Fla. July 16, 2008), *adopted in part, rejected in part*, 2008 WL 3245467 (M.D. Fla. Aug. 7, 2008). In a Report and Recommendation, I concluded that the Government's motion for default judgment should be granted and recommended that the Government should be awarded damages and costs. The District Court adopted the recommendation but rejected the award of filing fees to the Government, finding that the filing fee award would not be permitted.

11. *Monacelli v. Lee Cnty. Educ. Ass'n*, No. 2:08-cv-920-29SPC, 2009 WL 1930186 (M.D. Fla. June 17, 2009), *adopted in part, rejected in part*, 2009 WL 1883872 (M.D. Fla. June 30, 2009). In a Report and Recommendation on a motion to proceed *in forma pauperis*, I recommended that the motion be denied and the case dismissed with prejudice due to the fact that the plaintiff's complaint failed to state a valid cause of action. The District Court ultimately denied the motion as well, but concluded that the dismissal should be without prejudice.

12. *Coastal Conservation Ass'n v. Locke*, No. 2:09-cv-641-29SPC, 2010 WL 1407681 (M.D. Fla. Jan. 19, 2010), *accepted and adopted in part, rejected in part*,

2010 WL 1407680 (M.D. Fla. Apr. 6, 2010). In a Report and Recommendation on a motion to intervene, I recommended that a group be denied their request to intervene because they had the same goals as the governmental defendants. The District Court disagreed, and found that the interveners had presented sufficient evidence that the governmental defendants may not pursue the same objectives as the interveners. The Report and Recommendation was adopted in all other respects.

13. *Conservancy of Southwest Fla. v. United States Fish and Wildlife Serv.*, No. 2:10-cv-106-29SPC, 2010 WL 5140729 (M.D. Fla. Nov. 12, 2010), *adopted in part, rejected in part*, 2011 WL 1326805 (M.D. Fla. Apr. 6, 2011). In a Report and Recommendation on a motion to dismiss in this record review case, I concluded that the motion to dismiss should be denied, finding that the court had subject matter jurisdiction under the Administrative Procedures Act. The District Court agreed that the court had jurisdiction but found that the plaintiffs did not have a right to relief under the Administrative Procedures Act because the Service substantially complied with the statute and gave prompt consideration to their petitions. The Report and Recommendation was adopted in all other respects.

14. *Scarola v. Deutsche Bank Nat'l Trust Co.*, No. 2:10-cv-677-29SPC, 2011 WL 5335618 (M.D. Fla. Aug. 15, 2011), *adopted in part, rejected in part*, 2011 WL 5357681 (M.D. Fla. Nov. 3, 2011). In a Report and Recommendation on plaintiff's motion for leave to file a second amended complaint, I concluded that diversity jurisdiction had been properly pled but the motion should be denied because the proposed amended complaint failed to state a claim. I further recommended that the case be dismissed. The District Court adopted the findings regarding jurisdiction to the extent that plaintiff may be able to demonstrate diversity jurisdiction, but permitted plaintiff to file a second amended complaint and afforded plaintiff additional time to effectuate service.

15. *Flagiello v. Breakers Rest., LLC*, No. 2:10-cv-687, 2011 WL 6002973 (M.D. Fla. Aug. 1, 2011), *rejected*, 2011 WL 6004077 (M.D. Fla. Dec. 1, 2011). This is a Fair Labor Standards Act case in which I concluded in a Report and Recommendation that plaintiff's motion to approve the settlement should be denied, because there was no good cause to grant approval of the settlement agreement as plaintiff had brought a claim which was unlikely to succeed due to the lack of evidence showing an FLSA violation. The District Court disagreed, finding that there was a proper settlement reached between the parties.

16. *Royal Marco Point I Condo. Ass'n v. QBE Ins. Corp.*, No. 2:07-cv-16-99SPC, 2008 WL 4194792 (M.D. Fla. Aug. 8, 2008), *accepted in part, rejected in part*, 2008 WL 4194807 (M.D. Fla. Sept. 10, 2008). In a Report and Recommendation I concluded that a stay of the case should be lifted, the appraisal award should be confirmed, and that plaintiff's attorney's fees should be paid. The District Court agreed that the stay should be lifted and the appraisal award confirmed, but disagreed that plaintiff was entitled to attorney's fees at that time.

17. *United States v. Nunez*, No. 2:04-cr-14-29SPC (M.D. Fla. May 14, 2004); *accepted and adopted*, No. 2:04-cr-14-29SPC (M.D. Fla. June 30, 2004), *ruling upheld on reconsideration*, No. 2:04-cr-14-29SPC (M.D. Fla. Aug. 27, 2004), *rev'd per curiam*, 455 F.3d 1223 (11th Cir. 2006). In a Report and Recommendation on a motion to suppress, I concluded that because the officer did not have reasonable suspicion that the defendants were engaged in criminal activity, the traffic stop was unlawful. The District Court agreed and accepted and adopted the Report and Recommendation and specifically incorporated it into the Order. On reconsideration, the District Court upheld the denial of the motion to suppress. The Eleventh Circuit reversed, concluding that the facts known by the officers were sufficient to support reasonable suspicion. The Report and Recommendation and Order are supplied.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Civil Matters: As a magistrate judge, I issue orders on non-dispositive matters and orders on dispositive matters in consent cases, and I issue reports and recommendations on all dispositive matters referred to me by the district judges. My non-dispositive orders include discovery matters, motions to amend the pleadings, motions to modify the scheduling order and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Very few of the pretrial civil orders are published, although I have filed all orders with the court's Case Management Electronic Filing System (CM/ECF) since the court has maintained that system.

Criminal matters: As a magistrate judge, I issue orders on non-dispositive criminal matters such as appointment of counsel, detention and scheduling, which are all referred to the magistrate judge in this district. Very few, if any, of these orders are published.

In consulting all known sources, including Westlaw, Lexis and CM/ECF, I have found approximately 900 opinions which I understand to mean a "reasoned decision." Because CM/ECF was not in effect until 2004 in our court, the actual number is likely higher. Only 3 opinions have been published, which is less than 1%. The unpublished opinions are stored in CM/ECF and are designated "written opinions," which makes them available without cost on PACER. It appears that Westlaw and Lexis download and post the majority of these opinions on their services.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

*United States v. Sereme*, No. 2:11-cr-97-29-SPC (M.D. Fla. Mar. 27, 2012),  
adopted by District Judge John E. Steele, 2012 WL 1757271 (M.D. Fla. May 16,  
2012). Report and Recommendation supplied in response to 13(d).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow the recusal statutes and Code of Conduct for United States Judges. Whenever called for by the Code of Conduct for United States Judges, the recusal statutes, or my general interest in maintaining impartiality and the appearance of impartiality of the Court, I disclose the potential conflict and/or recuse myself.

Our court does not employ an "automatic" recusal system; therefore, I evaluate each case that is referred and assigned to me as the magistrate judge. Further, I review cases as they proceed, continuing to examine whether a conflict has arisen.

In the following cases, I initiated recusal *sua sponte* due to personal, family, or staff relationships:

*Stevens v. Fort Myers Police Dep't*, No. 2:12-cv-187

*Sapssov v. Health Mgmt. Assoc., Inc.*, No. 2:12-cv-46

*Norfolk Cnty. Ret. Sys. v. Health Mgmt. Assoc.*, No. 2:12-cv-163

*Croteau v. Assoc. Trust v. Tr. of the Chief Adm'r of the Municipal Court  
Twentieth Judicial Circuit in and for Lee County*, No. 2:11-cv-296

*Stonington Ins. Co. v. Villas Preschool and Child Care Ctr., Inc.*, No.  
2:09-cv-798

*Decosmo v. Health Mgmt. Assoc., Inc.*, No. 2:07-cv-741

*Freeman v. Health Mgmt. Assoc., Inc.*, No. 2:07-cv-673

*O'Connor v. Health Mgmt. Assoc., Inc.*, No. 2:07-cv-683

*Ingram v. Health Mgmt. Assoc., Inc.*, No. 2:07-cv-529

*Cole v. Health Mgmt. Assoc., Inc.*, No. 2:07-cv-484

*Kirshy v. Barnhart*, No. 2:06-cv-152

*United States v. Lane*, No. 2:05-cr-92

*Sports Supply Group, Inc. v. Sergio*, No. 2:03-cv-565

*O'Connell v. Gerald*, No. 2:03-cv-355

*Prevatt v. Crosby*, No. 2:03-cv-262

*Durain v. Sec'y, Fla. Dep't of Corr.*, No. 2:03cv24.

*Burkham v. Sch. Bd. of Lee Cnty.*, No. 2:02-cv-356

*The Sater Group, Inc. v. WCI Cmty's., Inc.*, No. 2:02-cv-252

*Farrell v. Woodham*, No. 2:01-cv-417

In the following cases, I recused myself because I was a named defendant in the action:

*Prescott v. Chappell*, No. 2:10-cv-390

*Bevan v. Chappell*, No. 2:09-cv-337

In the following case, I recused myself after a conflict that was not apparent from the pleadings was brought to my attention by one of the parties:

*Johnson v. Clark*, No. 2:03-cv-490

I did not recuse myself in these cases because the motion was procedurally deficient:

*Kress v. Twentieth Judicial Circuit*, No. 2:08-cv-54

*Kidwell v. Charlotte Cnty. Sch. Bd.*, No. 2:07-cv-13

I did not recuse myself in these cases because the motion was substantively deficient as it alleged prior adverse rulings:

*Shaw v. United States*, No. 2:11-cv-481

*Prescott v. Alejo*, No. 2:09-cv-791

*Clark v. Coffee*, No. 2:09-cv-257

*Busse v. Lee Cnty.*, No. 2:07-cv-228

*Bevan v. Lee Cnty. Sheriff's Dep't*, No. 2:03-cv-500

I did not recuse myself in these cases. The motion for each case was substantively deficient because my impartiality could not reasonably be questioned:

*Bevan v. D'Alessandro*, No. 2:04-cv-457

*Bevan v. Durling*, No. 2:03-cv-527

From 2000 to 2003 as a County Court Judge, I had to recuse myself on a very small number of cases. The state filing system was not automated at that time and a diligent search of my records does not reveal the citations of those cases. I followed the applicable Florida statute when determining whether recusal was appropriate.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices other than judicial offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Other than my own judicial campaign in 2002, I have not held office in any political party or election committee and I have not held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1987 – 2000

Office of the State Attorney, Twentieth Judicial Circuit  
Lee County Justice Center  
2000 Main Street, 6th Floor  
Fort Myers, Florida 33901  
Assistant State Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in an alternative dispute resolution proceeding.



## b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

In July 1987, I began my public service as an Assistant State Attorney in the Fort Myers Misdemeanor Division trying cases involving DUI, petit theft, battery, and domestic violence. In 1988, I was promoted to a felony attorney position and began prosecuting cases involving crimes against children, drugs, property crimes, and crimes against persons. I later became a felony track leader responsible for a caseload as well as for mentoring and supervising less experienced felony attorneys. I also conducted Grand Jury proceedings and was asked to prosecute cases outside of the Twentieth Judicial Circuit by the Governor of the State of Florida (Governor's Assignments). I was also responsible for the paperwork regarding the Interstate and Intrastate Extraditions of fugitives.

In October 1991, I was promoted to Office Head of the Hendry and Glades County Office. During the course of the year-long assignment, I elected to handle a felony docket, spent time in court daily, and tried seven major felony cases, three of which were first degree murder cases. My duties as an Office Head also included supervising the attorneys, secretaries, and investigators.

From 1993 to 1998, I served as a Supervisor of the Fort Myers Circuit Court Trial Division. My other duties included serving as Chair of the Hiring Committee, which was responsible for the hiring of new attorneys and secretaries. Because of my love for teaching trial strategy and preparation, I was instrumental in creating and implementing a training course for new Assistant State Attorneys.

In 1998, because of my experience investigating and trying homicide cases, I was selected as a member of the Cold Case Squad. As a member of this squad, I evaluated unsolved homicide cases and served as the legal advisor to local law enforcement and the Florida Department of Law Enforcement.

In 1999, I was selected by State Attorney Joseph P. D'Alessandro to become a member of the Executive Staff comprised of the State Attorney, two Deputy State Attorneys, the Executive Director, and several other senior staff members. The Executive Staff was responsible for determining policy, promotional, and budgetary issues within the four branch offices comprising the circuit.

From 1998 to 2000, I served as the Office Head of the Charlotte County Office. During that time, I handled a docket of felony cases consisting of major high profile homicide cases. While serving as a liaison between law enforcement and the State Attorney's Office, I assisted law enforcement by consulting at the crime scene, writing search warrants, and preparing cases for trial. In addition, I supervised a staff of over 30 attorneys, secretaries, and investigators.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My client was the State of Florida during my career with the State Attorney's Office. I typically worked closely with victims of crime and their families. During that time, I specialized in serious felony crimes including homicide, sexual battery, and crimes against children. I was also involved in supervising attorneys, secretaries, and investigators while acting as the Office Head of several of the offices in the Twentieth Judicial Circuit. I was also responsible as a member of the Executive Staff for developing office policy and procedures.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an Assistant State Attorney, I frequently appeared in Florida state courts for hearings, trials, and other miscellaneous matters.

- i. Indicate the percentage of your practice in:

- |                             |      |
|-----------------------------|------|
| 1. federal courts:          | 0%   |
| 2. state courts of record:  | 100% |
| 3. other courts:            | 0%   |
| 4. administrative agencies: | 0%   |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 1%  |
| 2. criminal proceedings: | 99% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an Assistant State Attorney I tried 89 cases. My time was spent in state court litigating criminal misdemeanor and felony cases, serving as sole counsel in the majority of cases. I was lead counsel in the majority of first degree murder cases

that I tried. In a small number of first degree murder cases, I was assisted by less experienced felony attorneys who handled minor witnesses.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 83% |
| 2. non-jury: | 17% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give the capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *State v. Prevatt*, Fla. Twentieth Judicial Circuit, No. 96-CF-2975, *aff'd*, 758 So. 2d 679 (Fla. 2d Dist. App. 2000); Hon. Isaac Anderson, Jr.; 1996 – 2000.

I was the lead prosecutor in this case that involved charges of first degree murder and aggravated child abuse. I obtained a conviction of the defendant, who was the natural father of the one-year-old victim. An initial hurdle was overcoming objections to *William's Rule* evidence. This case presented many challenges, including selecting jurors who could overcome their hesitance in believing that a father could hurt his own child; particularly because the victim was a "target child" with two older siblings whom the defendant had not abused. This case involved extensive medical evidence and testimony, requiring me to master the material in order to effectively examine the witnesses while simultaneously conveying this information in laymen's terms to the jury. The appellate court affirmed the defendant's conviction and life sentence.

Opposing Counsel: Marquin S. Rinard  
P.O. Box 151088

Cape Coral, Florida 33915  
(239) 793-5297

2. *State v. Lawson*, Fla. Twentieth Judicial Circuit, No. 94-CF-1568, *aff'd*, 695 So. 2d 705 (Fla. 2d Dist. App. 1997); Hon. William J. Nelson; 1994 – 1997.

I was the lead prosecutor in this case that involved the charge of attempted second degree murder with a firearm. The victim, who was the defendant's ex-wife, was shot in front of the couple's young children while she attempted to call 911. This case presented a unique challenge because the victim sustained life-threatening injuries that resulted in a coma. The trial hinged on her ability to recall and convey to the jury what had occurred, but her testimony was severely hampered by her physical and mental impairments. My questions during the victim's direct examination had to be succinct and simple. The defendant was convicted and the appellate court affirmed the conviction and sentence.

Opposing Counsel: Frank Alderman, Jr.  
Deceased

3. *State v. Gibson*, Fla. Twentieth Judicial Circuit, No. 91-CF-472, *aff'd*, 661 So. 2d 288 (Fla. 1995); Hon. Jay B. Rosman; 1991 – 1995.

This death penalty case involved the charges of first degree felony murder, first degree premeditated murder, and first degree burglary. The defendant, a prison releasee who had previously been convicted of committing a homicide with a machete, raped and beat a young woman to death with a barbell. I was involved in this case from the day the authorities found the victim's body, and assisted in every stage of the case including trial. This case posed many challenges. At the outset, jury selection posed difficulties because the crime was committed in a small town where most of the potential jurors knew the parties involved. The trial lasted several weeks. I was tasked with presenting complicated, circumstantial, and forensic evidence in an understandable and interesting manner to the jury. Because the defendant's wife was a material witness, her testimony triggered the spousal privilege. Further, the defendant had an extremely low IQ and suffered from several diagnosed neuroses, necessitating extensive research and preparation for cross-examination of the defendant's expert witnesses. The defendant was convicted and the appellate court affirmed the conviction and sentence.

Opposing Counsel: Marquin S. Rinard  
P.O. Box 151088  
Cape Coral, Florida 33915  
(239) 793-5297

4. *State v. Owens*, Fla. Twentieth Judicial Circuit, No. 90-CF-1196, *aff'd in part, rev'd in part*, 626 So. 2d 240 (Fla. 2d Dist. App. 1993); Hon. James Thompson; 1990 – 1993.

This case involved the charges of first degree burglary, sexual battery, aggravated battery on a person over the age of 65, robbery with a deadly weapon, and aggravated assault. I prosecuted the defendant, who had entered an elderly woman's home while she was sleeping, and proceeded to rape and severely beat her, leaving her for dead. As lead prosecutor, the case presented me with challenges because the victim was unable to identify her attacker and the defendant asserted an alibi defense. Circumstantial evidence found at the scene had to be pieced together, and experts in fingerprint identification, serology, and DNA testing had to be called as witnesses to prove identification. The jury convicted the defendant. During the sentencing hearing, I introduced certified copies of the defendant's convictions, evidence of fingerprint comparisons and matches, and specific findings regarding the defendant's prior criminal history to ensure he would qualify as a habitual violent felony offender.

Opposing Counsel: Brian Boyle  
2047 McGregor Boulevard  
Fort Myers, Florida 33901  
(239) 334-6602

5. *State v. Ahlefeld*, Fla. Twentieth Circuit Court, No. 89-CF-002273, *aff'd*, 589 So. 2d 298 (Fla. 2d Dist. App. 1991); Hon. James R. Thompson; 1989 – 1991.

This case involved six counts of capital sexual battery stemming from the defendant's sexual abuse of two boys under his care. The duration of the abuse spanned several years, including incidents when the defendant forced the boys to perform sexual acts on each other. The case was complicated and involved the temporary closure of the courtroom due to the sensitive nature of the crimes and the ages of the children, appointment of a guardian ad litem, admission of hearsay testimony from children under the age of 11, extensive expert testimony to explain the absence of medical evidence, and the extent and symptoms of posttraumatic stress syndrome. As the lead prosecutor, I was challenged during my direct examination of the children because the questions could not be suggestive. The jury convicted the defendant and the appellate court affirmed the conviction and sentence.

Opposing Counsel: Marzell Mitchell, Jr.  
No longer in practice

6. *State v. Baldwin*, Fla. Twentieth Judicial Circuit Court, No. 96-316, *aff'd*, 925 So. 2d 318 (Fla. 2d Dist. App. 2006); Hon. Cynthia Ellis; 1996 – 1998.

I assisted in the prosecution of this case that involved the charges of burglary with assault or battery upon a person, sexual battery with threat or force, and assault or battery on a person 65 years or older. The defendant had been previously convicted of sexual assault, sexual contact with a 9-year-old girl, and vehicular homicide. The defendant broke into the 92-year-old female victim's house where he proceeded to rape and beat her until he broke her ribs. Due to the age and frailty of the victim, it

was necessary to perpetuate her testimony via videotape. The conviction also hinged on DNA evidence. The jury convicted the defendant on all charges and, due to his habitual felony status, he was sentenced to life in prison. The appellate court affirmed his conviction and life sentence.

Opposing Counsel: Paul Sullivan  
Arnold D. Levine & Associates  
505 East Jackson Street  
Tampa, Florida 33602  
(813) 229-6585

7. *State v. Langill*, Fla. Twentieth Judicial Circuit Court, No. 94-CF-944, *aff'd*, 720 So. 2d 525 (Fla. 2d Dist. App. 1998); Hon. William J. Nelson; 1994 – 1996.

This case involved charges of first degree murder and aggravated stalking for which I served as lead prosecutor. The defendant was accused of stalking his girlfriend and murdering her in the parking lot of a restaurant. Because there were no eyewitnesses to the murder and the defendant maintained he acted in self-defense, the case rested solely on circumstantial and forensic evidence. The jury found the defendant guilty and the court imposed a life sentence. The appellate court affirmed the conviction and sentence.

Opposing Counsel: Marquin S. Rinard  
P.O. Box 151088  
Cape Coral, Florida 33915  
(239) 793-5297

8. *State v. Jones*, Fla. Twentieth Judicial Circuit Court, No. 95-CF-889; Hon. William J. Nelson; 1995 – 1997.

I served as lead prosecutor in this case against the defendant who was charged with first degree premeditated murder, armed burglary, violation of an injunction, aggravated assault with a deadly weapon, aggravated fleeing or eluding arrest, and attempted murder of law enforcement officers. The charges stemmed from the defendant breaking and entering his estranged wife's house, killing her, shooting at neighbors, leading responding officers on a high-speed chase, and shooting at the officers before surrendering. These events resulted in multiple crime scenes with hundreds of pieces of evidence. Additionally, the victim was pregnant at the time of the homicide and was the niece of a police sergeant within the department that responded to the scene. The defendant was convicted as charged on all counts except the aggravated assault with a deadly weapon, and was sentenced to life.

Opposing Counsel: John D. Mills  
5237 Summerlin Commons Boulevard, Suite 314  
Fort Myers, Florida 33907  
(239) 337-3535

9. *State v. Meynard*, Fla. Twentieth Judicial Circuit Court, No. 97-CF-115, *aff'd*, 764 So. 2d 590 (Fla. 2d Dist. App. 2000); Hon. R. Wallace Pack; 1997 – 1999.

This case stemmed from the defendant's choking, stabbing, and bludgeoning murder of a practicing dentist who lived across the street from the defendant's family. The victim's body was found by her elderly mother. This particularly heinous case presented difficulties because the defendant was 16-years-old at the time he committed the crime, and at trial the defendant's 14-year-old brother refused to testify against his brother despite previously giving a statement to authorities implicating his brother. The evidence presented during trial consisted of DNA, and bloody fingerprints and footprints. The jury found defendant guilty of first degree premeditated murder and first degree felony murder. Due to the age of the defendant, the court imposed a life sentence that was affirmed by the appellate court.

Opposing Counsel: Mark Cooper  
Public Defender's Office  
P.O. Drawer 1980  
Fort Myers, Florida 33902  
(239) 533-2911

10. *State v. Marquis*, Fla. Twentieth Judicial Circuit Court, No. 98-CF-460; Hon. Cynthia Ellis; 1998 – 1999.

This case involved a mother's abuse and neglect of her 3-month-old baby boy. The defendant previously had another child removed from her custody due to neglect. The baby was found blue-faced, underweight, filthy, and wet. I became involved in the case and took over the prosecution of the defendant when an amended information was filed. I prepared the case for trial, but after I finished my opening statement, the defendant waived her right to a jury trial and entered a plea of guilty as charged.

Opposing Counsel: Joseph Lombardo, Jr.  
Law Office of Joseph Lombardo, Jr., P.A.  
203 Wood Street  
Punta Gorda, Florida 33950  
(941) 621-2840

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Prior to becoming a judge, I spent my legal career as a prosecutor for the State Attorney's Office, and served as an office head and member of the executive staff responsible for determining policy, promotional, and budgetary issues in the four branch offices comprising the Twentieth Judicial Circuit. During that time, I also participated in the Lee, Charlotte, and Hendry County Bar Associations. In addition, I taught at the Southwest Florida Criminal Justice Academy and for the Florida Prosecuting Attorney's Association.

As a Lee County Court Judge, I was involved in the Lee County Bar Association and served as a judge for moot court competitions and Lee County Teen Court. During this time, I hosted numerous groups of school-aged children educating them on the civil and criminal justice system.

As a United States Magistrate Judge, I have been involved in numerous court governance committees. At the district level, I have served on the following committees: Automation, Bench Bar, Education Sub-Committee of the Historical Committee, Congressional Relations, Security, Case Management and Judicial Relations, Judicial Resources, CM/ECF Policies and Procedures, and Jury Management. I have also served as a board member for the Calusa American Inn of Court, a professional organization for attorneys and judges promoting professionalism, civility, and excellence in the practice of law.

On the national level, I serve on the Judges IT Training Advisory Committee and have been selected by the Administrative Office of the United States Courts and the Federal Judicial Center to teach at the New Magistrate Judges IT Training and Chambers IT Training sessions.

I have not performed any legal or lobbying activities for any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no financial or business interests from which I might expect to be compensated in the future. I did participate in the Florida Retirement System and maintain a vested benefit therein payable monthly upon attaining normal retirement age. I also anticipate



receiving income through the State of Florida's Deferred Compensation Plan established under Internal Revenue Code 457. As a federal employee, I anticipate receiving income through the federal Thrift Savings Plan.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I intend to participate in the presentation of continuing legal education and community outreach efforts. I have no plans, commitment, or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Statement.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will continue to adhere to the Code of Conduct for United States Judges and other applicable authority regarding the conflicts of interest and recuse myself accordingly. I am not aware of any conflicts of interest presently.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

To prevent conflicts of interest from arising, I do not have investments other than personal real estate and the Thrift Savings Plan. If confirmed, I intend to continue to be guided by the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest that might arise.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a public servant, I have been limited to community service activities that did not ethically interfere with my job function. The Code of Conduct for United States Judges and Florida's Code of Judicial Conduct both prohibit practicing law, thereby precluding a judge from participating in *pro bono* legal representation. Likewise as an Assistant State Attorney, I was also precluded from participating in the legal representation of others. However, despite these limitations, I found it important to explore other avenues to improve the law, the legal system, and the administration of justice.

I am most proud of my community service work in exposing students to the legal system. Unfortunately, many children have a negative impression of the court system because of their exposure to television, speaking with friends who have been involved in the system, or witnessing firsthand a court proceeding involving a family member. To alleviate these misconceptions, I found as a young prosecutor that I could enter the classroom setting and speak about my profession and the law and engage students, leaving them with a positive impression of the system.

Since becoming a judge, I have expanded those speaking opportunities to conducting mock trials and mock courtroom proceedings for school children of all ages. Many of the mock trials I have written myself. I also involve court staff, law enforcement officers, and other members of the legal community in presenting the scenarios to the students so the students can explore the varied opportunities for work in the justice system.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 3, 2012, I submitted an application to the Florida Federal Judicial Nominating Commission in connection with the vacancy posted on November 29, 2011. On February 17, 2012, I interviewed with the Middle District Conference of the Judicial Nominating Commission in Orlando, Florida, and was notified by the Judicial Nominating Commission that my name, along with two others, was being submitted to Senator Bill Nelson and Senator Marco Rubio. On March 28,

2012, I interviewed with Senators Nelson and Rubio in Senator Nelson's office in Washington, DC. Both Senators advised me they were submitting my name along with two others, to the White House for consideration in connection with the vacancy.

Since April 26, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 29, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 25, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Chappell, Sheri P.	<b>2. Court or Organization</b> U.S. Dist. Ct. Middle Dist. FL.	<b>3. Date of Report</b> 06/25/2012
<b>4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> U.S. District Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 06/25/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2011 to 06/13/2012
<b>7. Chambers or Office Address</b> U.S. Courthouse & Federal Bldg. 2110 First Street Fort Myers, FL 33901		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)



NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1.		
2.		
3.		
4.		
5.		

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)



NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1. 1987	State of Florida Pension - Pension Upon Retirement Age
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 6

Name of Person Reporting	Date of Report
Chappell, Sheri P.	06/29/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

**B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.**  
*(If dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2011	Lehigh Regional Medical Center - Salary/Materials Management Director
2. 2012	Bishop Verot Catholic High School - Coach and Groundskeeper Stipend
3.	
4.	

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 6

Name of Person Reporting	Date of Report
Chappell, Sheri P.	06/25/2011

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE	CODE
1.				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 6

Name of Person Reporting	Date of Report
Chappell, Sheri P.	06/25/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					(5) Identity of buyer/seller (if private transaction)
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)		
1. Bank of America (Cash Checking) (Money Market Savings)	A	Interest	L	T	Exempt					
2. Vanguard Institutional Index Fund		None	J	T						
3. Bank of America - (IRAX)Money Market)	A	Interest	K	T						
4. Morgan Stanley Institutional Fund Growth Portfolio		None	K	T						
5. Prudential Guaranteed Income Fund		None	J	T						
6. Prudential Core Bond Enhanced Index Fund		None	J	T						
7. LSV Large Cap Value Fund		None	J	T						
8. Boston Company Small Cap Value Fund		None	J	T						
9. Times Square Small Cap Growth Fund		None	J	T						
10. AQR International Blend Fund		None	J	T						
11. Health Management Association Stock		None	J	T						
12. JP Morgan Large Cap Growth Fund		None	J	T						
13. Florida Prepaid College Fund		None	K	T						
14.										
15.										
16.										
17.										

1. Income Gain Codes (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P1 - More than \$50,000,000	D - \$5,001 - \$15,000 H2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q - Appreciat L - Book Value	R - Cost (Real Estate Only) V - Other	S - Appreciat W - F-invested	T - Cash Market	

## FINANCIAL DISCLOSURE REPORT

Page 5 of 6

Name of Person Reporting	Date of Report
Chappell, Sheri P.	06/28/2012

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

In previous Reports, I listed my ownership in the Turner Large Cap Growth Fund in Part VII. I no longer own that Fund, as it was rolled into the JP Morgan Large Cap Growth Fund (Part VII, Line 12) during the reporting period. Also, that Fund did not earn any income during the reporting period.



**FINANCIAL DISCLOSURE REPORT**

Page 6 of 6

Name of Person Reporting	Date of Report
Chappell, Sheri P.	06/25/2012

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Sheri P. Chappell

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		97	541	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule		68	138	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		125	061
Real estate owned - personal residence		230	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		47	500				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		238	235				
Bank of America Money Market IRAs		19	734				
				Total liabilities		125	061
				Net Worth		576	087
Total Assets		701	148	Total liabilities and net worth		701	148
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Florida Prepaid College Funds – 4-Year Univ. Plan	\$ 16,250
AQR International Blend Fund	2,176
Boston Company Small Cap Value Fund	748
Health Management Ass'n stock	1,125
JP Morgan Large Cap Growth Fund	1,435
LSV Large Cap Value Fund	1,404
Morgan Stanley Institutional Fund Growth Portfolio	28,250
Prudential Core Bond Enhanced Index Fund	1,726
Prudential Guaranteed Income Fund	3,057
TimeSquare Small Cap Growth Fund	753
Vanguard Institutional Index Fund	11,214
Total Listed Securities	<u>\$ 68,138</u>

AFFIDAVIT

I, Sheri Polster Chappell, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

June 25, 2012  
(DATE)

Sheri Polster Chappell  
(NAME)

Jerry J. Thomas  
(NOTARY)



Senator SCHUMER. Thank you, Judge Chappell.  
And last but not least, Mr. Barnett.

**STATEMENT OF MARK A. BARNETT, NOMINEE TO BE A JUDGE  
FOR THE U.S. COURT OF INTERNATIONAL TRADE**

Mr. BARNETT. Thank you, Mr. Chairman. I would like to thank both Senator Leahy and Senator Grassley for arranging this hearing. I would like to thank you, Senator Schumer, for presiding and for the kind words of introduction. I would also like to thank President Obama for the honor and privilege of this nomination.

I am joined here today by several family and friends, including my wife of almost 20 years, Sara Franko; my oldest son, Jasper, who is getting his civics lessons firsthand today. He is an eighth grader in the Fairfax County Public Schools. I have a younger son, Robson, who is a kindergartner, and he is a very active one, and so he is getting his kindergarten lessons directly from his teacher today.

[Laughter.]

Mr. BARNETT. I would also like to acknowledge my mother, Bonnie Barnett, who is here with me today, as well as two of her sisters, Pat Kimball and Peg Gill. And I would like to recognize two people who were very important in my upbringing but who are no longer with us, and that is my grandparents, and their parents, Gene and Wahu Wadsworth.

I do have two brothers, Eric and David, and they and their families were unable to join us today, but they will be watching on the Webcast, I am sure, along with several cousins. I would not be here today without the support of all of my family.

I would like to also acknowledge friends and colleagues at the Department of Commerce, both current and former colleagues there. Many of them are watching on the Web. Two current colleagues were able to join me, that is, Michele Lynch and Shana Hofstetter. And we have one former colleague who is here because she is on your staff, and that is Ms. Stacy Ettinger, and I would like to thank them for their support.

Thank you, Senator.

[The biographical information follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Mark Allen Barnett

2. **Position:** State the position for which you have been nominated.

Judge of the United States Court of International Trade

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Room 3622  
Washington, DC 20230

Residence: McLean, Virginia

4. **Birthplace:** State year and place of birth.

1963; Reading, Pennsylvania

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1985 – 1988, University of Michigan Law School; J.D. (*cum laude*), 1988

1981 – 1985, Dickinson College; B.A. (*magna cum laude*), 1985

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1995 – Present  
U.S. Department of Commerce

Office of Chief Counsel for Import Administration  
1401 Constitution Avenue, NW  
Washington, DC 20230  
Deputy Chief Counsel (2005 – Present)  
Senior Counsel (1999 – 2005)  
Attorney (1995 – 1999)

2008 – 2009 (on detail from the Department of Commerce)  
United States House of Representatives  
Committee on Ways and Means  
Subcommittee on Trade  
1102 Longworth House Office Building  
Washington, DC 20515  
Department of Commerce Detailee/Trade Counsel

1988 – 1995  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Associate

Summer 1987  
Patton, Boggs & Blow (now Patton Boggs)  
2550 M Street, NW  
Washington, DC 20037  
Summer Associate

Fall 1986  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109  
Research Assistant to Professor Bruno Simma

Summer 1986  
Kinder & Wuerfel (firm no longer exists)  
555 Montgomery Street  
San Francisco, California 94111  
Law Clerk

Summer 1985  
IBM  
1100 Berkshire Boulevard  
Suite 125  
Wyomissing, Pennsylvania 19610  
Marketing Support Assistant

Other Affiliations (uncompensated):

2010 – Present

Chesterford Community Association, Inc. (no physical address)

McLean, Virginia 22101

Treasurer

2000 – 2001

Ellison Heights-Mount Daniel Community Association (no physical address)

Falls Church, Virginia 22046

Vice-President

1985 – 1986, 1990 – 1992

International Model United Nations Association

One Metropolitan Square

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

Chairman, Board of Directors (1991 – 1992)

Vice-Chairman, Board of Directors (1985 – 1986)

Member-At-Large (1985 – 1986, 1990 – 1991)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Department of Commerce Gold Medal Award (1997, 2002)

Department of Commerce Silver Medal Award (2002)

International Trade Administration Bronze Medal Award (2000)

Department of Commerce, Office of Chief Counsel for Import Administration

Outstanding Attorney Award (1996, 1999)

Note Editor, Michigan Yearbook of International Legal Studies, University of Michigan

Law School (1987 – 1988)

Phi Beta Kappa, Dickinson College (1985)

John O. Cockey, Jr. Memorial Scholarship, Dickinson College (estimate 1984)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.



American Bar Association (1989 – 1995)  
 Customs and International Trade Bar Association (2010 – Present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania (1988) (currently inactive)  
 District of Columbia (1989)

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Federal Circuit (2008)  
 United States Court of International Trade (2008)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chesterford Community Association (2002 – Present)  
 Treasurer (2010 – Present)  
 Dickinson College Admissions Volunteers (2008 – Present)  
 Ellison Heights-Mount Daniel Community Association (1993 – 2002)  
 Vice-President (2000 – 2001)  
 Food Allergy and Anaphylaxis Network (2006 – Present)  
 Four Seasons Tennis Club (2006 – 2008, 2011)  
 Friends of the National Zoo (2009 – Present)  
 Highlands Swim and Tennis Club (2004 – Present)  
 International Model United Nations Association (1981 – 1992)  
 Chairman, Board of Directors (1991 – 1992)  
 Vice Chairman, Board of Directors (1985 – 1986)  
 Member-At-Large (1985 – 1986, 1990 – 1991)  
 Local Elementary School Parent Teacher Association (2005 – 2011)

Local Middle School Parent Teacher Association (2011 – Present)  
 National Geographic Society (1999, 2001, 2005)  
 Natural Resources Defense Council (2009)  
 Poplar Heights Recreation Association (approx. 1997 – 2004)  
 Reading High School Alumni Association (2006 – Present)  
 Sierra Club (2001 – 2002, 2005 – Present)  
 Smithsonian Institute (2003 – Present)  
 United States Tennis Association (2007 – Present)  
 University of Michigan Alumni Association (1988 – Present)  
 Washington International Trade Association (2009 – Present)  
 World Wildlife Fund (2010)  
 Yosemite Association (2008)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge and belief, none of the organizations listed in response to question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*The United States Court of International Trade in the Middle—International Tribunals: An Overview*, 19 TUL. J. INT'L & COMP. L. 421 (2011). Copy supplied.

*Choices, Choices: Domestic Courts Versus International Fora: A Commerce Perspective*, 17 TUL. J. INT'L & COMP. L. 435 (2009). Copy supplied.

With Sara Khan, Kathy B. Reif, & Elizabeth Shryock, 28 U.S.C. §1581(c)—*Review by the Court of International Trade of Antidumping & Countervailing Duty Determinations Issued by the Department of Commerce*, 40 GEO. J. INT'L L. 153 (2008). Copy supplied.

With Melissa G. Skinner, *Suspension of Antidumping and Countervailing Duty Investigations*, in THE COMMERCE DEPARTMENT SPEAKS ON INTERNATIONAL TRADE & INVESTMENT 995 (Practising Law Institute, 1998). Copy supplied.

With Stephen J. Powell, *The Role of United States Trade Laws in Resolving the Florida-Mexico Tomato Conflict*, 11 FLA. J. INT'L L. 319 (1997). Copy supplied.

With Stewart A. Baker, *U.S. – Canada Binational Panel Determinations: 1991 – 1994*, in NORTH AMERICAN FREE TRADE AGREEMENTS (James R. Holbein & Donald J. Musch eds., 1994). Copy supplied.

*Jurisdiction—Foreign Sovereign Immunities Act—Commercial Activity Exception*, in INTERNATIONAL DECISIONS, 84 AM. J. INT'L L. 262 (Peter D. Trooboff ed., 1990). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 10, 2012; Panelist, *WTO Case Update*, 2012 International Trade Update, Georgetown University Law Center, Washington, DC. Draft remarks and an audio recording of the conference are supplied.

November 18, 2010: Panelist, *CIT in the Middle—Intersection with the Agencies, the Federal Circuit, and International Tribunals*, 16th Judicial Conference of the United States Court of International Trade, New York, New York. Draft transcript and two press articles referencing my remarks are supplied. I am also providing the conference version of a paper which was subsequently published as *The United States Court of International Trade in the Middle—International Tribunals: An Overview*, 19 TUL. J. INT'L & COMP. L. 421 (2011).

February 25, 2010: Panelist, *The Year in Review in AD/CVD Law*, 2010 International Trade Update, Georgetown University Law Center, Washington, DC. An unpublished paper, *Trade I: The Year in Review in AD/CVD Law*, prepared jointly with my fellow panelists and presented at the event, is supplied. I am also supplying an audio recording of the presentation (embedded in a pdf document).

March 6, 2009: Panelist, *After Zeroing, Then What?* 2009 International Trade Update, Georgetown University Law Center, Washington, DC. An audio recording of the conference is supplied.

November 19, 2008: Panelist, *Choices, Choices: Domestic Courts v. International Fora*, 15th Judicial Conference of the United States Court of International Trade, New York, New York. Pre-publication transcript is supplied. I am also providing the conference version of a paper which was subsequently published as *Choices, Choices: Domestic Courts Versus International Fora: A Commerce Perspective*, 17 TUL. J. INT'L & COMP. L. 435 (2009).

February 25, 2008: Panelist, *Customs and International Trade Issues Affecting Seafood Imports*, 2008 International Boston Seafood Show, Boston, Massachusetts. I have no notes, transcript or recording. The Boston Seafood Show does not have a physical address.

March 12, 2007: Panelist, *Customs and International Trade Issues Affecting Seafood Imports*, 2007 International Boston Seafood Show, Boston, Massachusetts. A copy of my notes is supplied.

February 1, 2007: Panelist, *The Year in Review at the WTO—On Beyond Zeroing*, 2007 International Trade Update, Georgetown University Law Center, Washington, DC. A copy of my remarks and an audio recording are supplied.

February 2, 2006: Panelist, *The Year in Customs and Trade—Key Developments at the CIT/CAFC and Lessons Learned for Practice*, 2006 International Trade Update, Georgetown University Law Center, Washington, DC. A copy of my notes and an audio recording are supplied.

October 2001: Panelist at a session on careers in international law, University of Michigan Law School International Law Society, Ann Arbor, Michigan. I have

no notes, transcript, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

September 18, 1998: Presenter, *Suspension of Antidumping and Countervailing Duty Investigations*, in *The Commerce Department Speaks on International Trade & Investment*, organized by the Practising Law Institute, and held at the Marriott Georgetown University Conference Center, Washington DC. My notes are supplied, as is a subsequent article reporting on my presentation. A published paper, prepared in connection with the public conference, is supplied in response to question 12(a).

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

*Commerce Says EU, Japan Zeroing Deal Does Not Translate to U.S. Courts*, INSIDE U.S. TRADE, Feb. 23, 2012. Copy supplied.

*Commerce Proposes AD, CVD Enforcement Package to Aid Export Initiative*, INSIDE U.S. TRADE, Aug. 27, 2010. Copy supplied.

As part of my duties at the Department of Commerce, on several occasions I have spoken to reporters on background, individually or as part of a group. I do not have specific records of such conversations and did not, at the time, maintain copies of subsequent articles for which I had provided comments or background. Based on personal recollection, I have located and am supplying all articles which I believe reference interviews in which I participated:

*Petitioners May Explore New Options to Boost AD Margins in Reviews*, INSIDE U.S. TRADE, Feb. 16, 2012. Copy supplied.

*Commerce Rule Leaves Door Open to Possible Future Use of Zeroing*, INSIDE U.S. TRADE, Feb. 16, 2012. Copy supplied.

*Administration Moving Ahead with Implementation of Zeroing Decisions*, INSIDE U.S. TRADE, Oct. 20, 2011. Copy supplied.

Rossella Brevetti, *Commerce Official Says Timing of Zeroing Final Rule Cannot Be Predicted*, BNA INTERNATIONAL TRADE DAILY, July 14, 2011. Copy supplied.

*Commerce Official Downplays Date for Zeroing Final Rule in OIRA Report*, INSIDE U.S. TRADE, July 13, 2011. Copy supplied.

*U.S. Official Unsure Whether, When U.S. Will Issue Final Zeroing Proposal*,  
INSIDE U.S. TRADE, June 21, 2011 (different version reprinted June 23, 2011).  
Copies supplied.

*Commerce Still Mulling Whether It Will Use Zeroing in Some AD Reviews*, INSIDE  
U.S. TRADE, Jan. 6, 2011. Copy supplied.

*U.S. Continues Fight to Preserve Zeroing in Doha Despite New Proposal*, INSIDE  
U.S. TRADE, Jan. 6, 2011. Copy supplied.

*Details of How, When U.S. Will Comply With WTO Zeroing Cases Unclear*,  
INSIDE U.S. TRADE, Jan. 6, 2011. Copy supplied.

*U.S. Still Examining Whether It Will Adjust Past Reviews in Zeroing Cases*,  
INSIDE U.S. TRADE, Jan. 5, 2011. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never been a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

- e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- I have never been a judge.
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.
15. **Public Office, Political Activities and Affiliations:**
- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have never had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member, Saxophone Club, Bill Clinton's Presidential Campaign (early 1990's)

In 1977 and 1979, Walker Wadsworth, my uncle, ran for city council in Reading, Pennsylvania. As a junior high and high school student, I did door-to-door canvassing and helped with election related mailings without compensation.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1995  
 Steptoe & Johnson  
 1330 Connecticut Avenue, NW  
 Washington, DC 20036  
 Associate

1995 – Present  
 U.S. Department of Commerce  
 Office of Chief Counsel for Import Administration  
 1401 Constitution Avenue, NW



Washington, DC 20230  
 Attorney (1995 – 1999)  
 Senior Counsel (1999 – 2005)  
 Deputy Chief Counsel (2005 – Present)

2008 – 2009 (on detail from the Department of Commerce)  
 United States House of Representatives  
 Committee on Ways and Means  
 Subcommittee on Trade  
 1102 Longworth House Office Building  
 Washington, DC 20515  
 Department of Commerce Detailee/Trade Counsel

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After graduation from law school, I worked as an associate at Steptoe & Johnson. I began in the general litigation section, where I conducted legal research and document review related to government contracts and false claims issues. After roughly 18 months, I transitioned into the international group where my work focused on unfair trade cases, mostly providing advice to foreign parties involved in antidumping and countervailing duty cases before the United States International Trade Commission and the United States Department of Commerce.

Since 1995, I have worked in the Office of Chief Counsel for Import Administration at the United States Department of Commerce. As a staff attorney, I provided legal advice to Import Administration officials regarding the conduct of antidumping and countervailing duty investigations and provided legal support to them in negotiating suspension agreements with parties to these cases. As determinations were made and parties challenged those determinations in domestic courts, I drafted briefs for the United States Department of Justice in defense of the determinations and prepared the Justice attorneys for argument.

In 1999, I became a Senior Counsel in the Office of Chief Counsel for Import Administration. As a Senior Counsel, I provided supervisory

advice to staff attorneys working with the Import Administration in the conduct of antidumping and countervailing duty cases. In addition, I participated in defending determinations by the Import Administration in dispute settlement proceedings at the World Trade Organization (WTO) and provided senior level guidance on significant issues in domestic litigation and in litigation before bi-national panels under the North American Free Trade Agreement. I also participated in the Doha Round of World Trade Organization negotiations to revise the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement), providing legal and negotiating advice to senior officials of the International Trade Administration.

Since 2005, I have been the Deputy Chief Counsel for Import Administration. In that role, I am involved in the supervision of all aspects of the legal services provided by an office of approximately 30 attorneys. I have continued to conduct and supervise litigation before World Trade Organization dispute settlement panels and its Appellate Body and I regularly coordinate these efforts with senior officials at the Office of the United States Trade Representative and the United States International Trade Commission. I have provided oversight and advice on significant legal issues in litigation before NAFTA Chapter 19 bi-national panels and before U.S. courts. I have advised agency and congressional officials regarding implementation of WTO dispute settlement reports and issues arising in the WTO Agreements as well as both the Doha Round rules negotiations and Trans-Pacific Partnership negotiations. In addition to my legal and supervisory duties, I also have been overseeing the office budget, office administration and hiring.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While in private practice, much of my work was on behalf of foreign respondent companies such as Teijin, Ltd., Nippon Steel Corporation, and Ausimont, USA, involved in antidumping proceedings before the United States International Trade Commission and the United States Department of Commerce. Since 1995, the United States government has been my only client.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

In private practice, a significant amount of my work was involved in representing clients before administrative agencies in trade disputes, a quasi-judicial type of proceeding. I appeared in court twice, but did not argue either case.

As an attorney with the Office of the Chief Counsel for Import Administration, approximately one-half of my work has involved litigation before various tribunals. As a staff attorney, I drafted briefs for domestic litigation, assisted co-counsel from the Department of Justice in preparing for oral argument, and attended hearings with them, but did not argue the cases. As a senior counsel and as Deputy Chief Counsel, I supervise the work of staff attorneys on complex or highly significant litigation matters for the agency. I have also briefed and argued a number of cases before international tribunals (bi-national panels established pursuant to Chapter 19 of the North American Free Trade Agreement (NAFTA) and dispute settlement panels and the Appellate Body of the World Trade Organization (WTO)). For purposes of this response, I have included these international tribunals as "other courts."

- i. Indicate the percentage of your practice in:
  1. federal courts: 40%
  2. state courts of record: 0%
  3. other courts: 40%
  4. administrative agencies: 20%
- ii. Indicate the percentage of your practice in:
  1. civil proceedings: 100%
  2. criminal proceedings: 0%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While in private practice, I appeared in two cases as an associate counsel which were tried to final judgment. While with the United States Department of Commerce, I have appeared, as agency counsel, in 30 cases before the Court of International Trade, and at least 10 cases before the Court of Appeals for the Federal Circuit, each of which were tried to final judgment. In such cases, I drafted briefs or portions of briefs for the Department of Justice (DOJ), assisted DOJ counsel in preparation for oral argument, and often attended oral argument with them. In addition, I have participated as co-counsel, arguing certain issues, in three bi-national panels pursuant to the North American Free Trade Agreement, and at least 10 dispute settlement proceedings at the World Trade Organization, all of which were defended through the issuance of a final report by the relevant dispute settlement body.

- i. What percentage of these trials were:
  1. jury: 0%
  2. non-jury: 100%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As agency counsel, I have worked with the United States Department of Justice, Office of the Solicitor General in successfully opposing writs of certiorari in Corus Staal BV v. DOC, 395 F.3d 1343 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006) and Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004), cert. denied, mot. granted, Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). In these cases, I supervised the preparation of draft oppositions to certiorari provided to the Office of the Solicitor General, advised members of that office on the intricacies of the unfair trade laws as they reviewed and revised the draft oppositions, and reviewed the final product prior to filing. There were two subsequent efforts to seek Supreme Court review of the same issues and I provided additional, but more limited, assistance in those successful oppositions to certiorari. SNR Roulements v. United States, 341 F. Supp. 2d 1334 (C.I.T. 2004), aff'd, 210 Fed. Appx. 992 (Fed. Cir. 2006), cert. denied, mot. granted, JTEKT Corp. v. United States, 552 U.S. 1007 (2007); and Corus Staal BV v. United States, 387 F. Supp. 2d 1291 (C.I.T. 2005), aff'd, 186 Fed. Appx. 997 (Fed. Cir. 2006), cert. denied, 551 U.S. 1144 (2007). In all four of these cases, certiorari was denied. Copies of the oppositions are supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Ausimont USA, Inc. v. United States, 19 C.I.T. 151, 882 F. Supp. 1087 (C.I.T. 1995), Judge R. Kenton Musgrave.

This case, from the time that I was in private practice, involved the appeal to the Court of International Trade of an affirmative finding by the United States Department of Commerce that Ausimont USA was circumventing an antidumping duty order. Commerce found circumvention based on Ausimont's importation of an intermediate product for finishing in a newly constructed facility in Texas. I had actively represented

Ausimont in the administrative proceeding (beginning in mid-1991) and worked closely with the partner to develop the legal theories and draft the briefs for appeal of Commerce's decision. The court affirmed Commerce's decision to base its determination on a difference in value between the imported good and the finished good that considered qualitative factors and analogous production costs in Italy and disregarded the costs incurred in Texas because it was a start-up operation incurring losses.

Co-Counsel for the Plaintiff:

Daniel J. Plaine (now retired)

Counsel for Defendant United States:

Michael Kane (now deceased)

Jeffery Lowe (of counsel, representing the Department of Commerce)  
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2. Torrington Co. v. United States, 22 C.I.T. 36, 995 F. Supp. 117 (C.I.T. 1998),  
Judge Nicholas Tsoucalas.

In this case, the court affirmed the United States Department of Commerce's finding that certain automotive parts were not within the scope of the antidumping duty order on antifriction bearings. The court affirmed Commerce's finding that the scope of the order was clear, that within the miscellaneous automotive parts classification, only so-called "wheel hub units" were included in the scope and all other products entering under that classification code were excluded. The court also affirmed Commerce's decision not to consider new or additional evidence about this scope issue some five years after the antidumping duty order was issued. I was the staff attorney on this case, advising the Import Administration officials making the scope determination, then working with the Department of Justice attorney to defend that determination. I drafted the brief filed with the U.S. Court of International Trade, prepared the Justice attorney for the oral argument and attended the argument.

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3. Elkem Metals Co. v. United States, 23 C.I.T. 170, 44 F. Supp. 2d 288 (C.I.T. 1999), Judge Judith M. Barzilay.

During the original investigation in this case, the United States Department of Commerce had entered into a suspension agreement with the Government of the Ukraine as an alternative to an antidumping duty order. The agreement required the Government of the Ukraine to limit the export quantity of the subject merchandise to the United States and to ensure that United States sales of that merchandise were at or above certain reference prices. Commerce annually provided parties with an opportunity to request a review of the suspension agreement. Without taking advantage of these opportunities, the domestic industry sought to invoke the Court of International Trade's residual jurisdiction. Distinguishing a prior case relied upon by the plaintiff, the Court dismissed the case for lack of subject matter jurisdiction, finding that the residual jurisdiction could not be invoked when jurisdiction under another provision could have been invoked and would not have been manifestly inadequate. I worked with the Department of Justice attorney in this case, drafting the brief filed with the U.S. Court of International Trade, preparing the Justice attorney for the oral argument and attending the argument.

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Counsel for the Plaintiff:

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4. WTO Panel Report, United States – Anti-Dumping and Countervailing Measures on Steel Plate from India, WT/DS206/R and Corr. 1 (2002), Panel composed of Chairman Tim Groser and Members Salmiah Ramli and Luz Elena Reyes de la Torre.

In this World Trade Organization dispute, India challenged the consistency of certain provisions of the United States' antidumping duty laws and a particular antidumping duty determination made by the United States Department of Commerce. The panel rejected India's arguments and, instead, accepted the United States' arguments that the provisions contained sufficient discretion such that Commerce could apply them in a WTO-consistent manner. The panel did, however, find that Commerce had failed to comply with its WTO obligations in one aspect of its determination. I was the lead attorney at the Department of Commerce on this case. I drafted substantial portions of the briefs filed with the panel, worked closely with attorneys from the United States Trade Representative's Office, and argued several aspects of the case to the dispute settlement panel.

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5. WTO Panel Report, United States – Section 129(c)(1) of the Uruguay Round Agreements Act, WT/DS221/R (2002), Panel composed of Chairperson Claudia Orozco and Members Simon Farbenbloom and Edmond McGovern.

In this dispute, Canada challenged the consistency of a specific statutory provision as being inconsistent with the United States' World Trade Organization obligations. The provision in question provides that determinations made by the United States Department of Commerce or the International Trade Commission, which the United States Trade Representative instructs Commerce to implement, are to be given effect as to imports that occur on or after the date the Trade Representative so instructs. As the lead attorney for the Department of Commerce, I worked closely with the lead attorney at the Office of the United States Trade Representative to develop an approach to the dispute that the panel ultimately adopted. We worked closely together, drafting the briefs, responding to more than 100 written questions from the panel, and arguing the case through two meetings with the panel. Ultimately, the panel accepted the United States' argument that the provision identified by Canada did not mandate how such prior imports were to be treated.

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6. Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004), Judges Pauline Newman, William C. Bryson, and Sharon Prost.

This was the first case taken to the Court of Appeals for the Federal Circuit in which a party sought to have the court follow a dispute settlement report from the World Trade Organization Appellate Body addressing the issue of so-called “zeroing” – an antidumping calculation approach that does not permit the results of non-dumped sales to offset or reduce any dumping found on other sales. While the court rejected the Government’s argument that zeroing was required by the statute, the court agreed with the Government that zeroing was a reasonable interpretation of the statute and that it prevented non-dumped sales from “masking” dumping that otherwise was occurring. The court also rejected the argument that the WTO dispute settlement finding, in a dispute involving the European Union and not the United States, should require a different result. While there were other issues involved in this case, my role in the case was focused on this “zeroing” issue, assisting in the development of the approach to the issue, supervising the drafting of the brief on this issue at Commerce and working closely with the Department of Justice attorneys to prepare for the argument.

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7. Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005),  
Judges Haldane Robert Mayer, S. Jay Plager, and Sharon Prost.

This was the first case involving an appeal of an antidumping duty investigation taken to the Court of Appeals for the Federal Circuit in which a party sought to have the court apply certain dispute settlement reports (including one addressing an antidumping investigation by the United States) from the World Trade Organization Appellate Body addressing the issue of “zeroing.” The court agreed with the Government’s position that zeroing in the context of an investigation was a reasonable interpretation of the statute. The court declined to give deference to any WTO dispute settlement reports, even when there was a report finding against the use of zeroing by the United States, unless and until that report was adopted by the United States pursuant to the statutory scheme adopted by Congress. I assisted in the development of the approach to the issue, supervised the drafting of the brief at Commerce and worked with the Department of Justice attorneys to prepare for the argument.

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8. World Trade Organization Dispute Regarding Softwood Lumber from Canada  
Antidumping Investigation.

Implementation Dispute: Panel Report, United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada, WT/DS264/RW (2006). Panel composed of Chairman Toulfiq Ali and Members Gerhard Hannes Welge and Adrián Makuc, as reversed by the Appellate Body Report, WT/DS264/AB/RW (2006), Appellate Body composed of Presiding Member Georges Abi-Saab and Members Luiz Olavo Baptista and Giorgio Sacerdoti.

After the Appellate Body found that “zeroing” in the investigation was inconsistent with certain language in the Agreement, the United States recalculated the antidumping duty margins by using a different comparison methodology not implicated by that language. Canada challenged the implementation, arguing that the United States continued to use zeroing and that even with this different methodology, that use was inconsistent with the Antidumping Agreement. The implementation panel rejected Canada’s claim, finding that the Appellate Body’s earlier rejection of zeroing was based on specific text limited to one methodology when used in investigations. The Appellate Body disagreed with the panel, finding that the use of zeroing was inconsistent with WTO obligations even in the context of the comparison methodology used in the implementation proceeding. In doing so, the Appellate Body adopted different textual bases for its findings than it had in the initial dispute. Throughout this dispute, I was the lead Department of Commerce attorney on the zeroing issue, drafting the briefs and arguing the issues before both the panel and the Appellate Body.

Co-Counsel for the United States:

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9. In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination, Panel No. USA-CDA-2002-1904-02, 2003 FTAPD LEXIS 7 (2003), remanded, 2004 FTAPD LEXIS 2 (2004), remanded, 2005 FTAPD LEXIS 5 (2005), Panel composed of Chairman John M. Peterson, and Members Jeffery Atik, Ivan R. Feltham, W. Roy Hines, and Leon Trakman.

Concurrent with the World Trade Organization dispute discussed above, Canada and various respondent companies and associations challenged the United States Department of Commerce antidumping duty determination before a bi-national panel composed pursuant to Chapter 19 of the North American Free Trade Agreement. While there were numerous issues in dispute, my involvement was focused on briefing and arguing the challenge to Commerce's use of the "zeroing" methodology.

In its initial decision, the panel found that the statute was ambiguous as to the question of zeroing and affirmed the use of zeroing as reasonable. The panel took note of the WTO dispute and suggested that if the WTO dispute were to result in a finding against the United States, the panel might find the use of zeroing to be unreasonable. While this panel process played itself out, the WTO Appellate Body issued its findings that the use of zeroing in the investigation was inconsistent with the WTO Antidumping Agreement. The NAFTA panel ordered additional argument, the result of which was a third remand order because the panel now considered zeroing to be an unreasonable interpretation because it was inconsistent with the United States' WTO obligations.

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10. World Trade Organization Dispute Regarding the Methodology for Calculating Dumping Margins.

Initial Dispute: Panel Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), WT/DS294/R (2005), Panel composed of Chairman Crawford Falconer and Members Hans-Friedrich Beseler and William Davey, as modified by the Appellate Body Report, WT/DS294/AB/R (2006), Appellate Body composed of Presiding Member Giorgio Sacerdoti and Members Merit E. Janow and Yasuhei Taniguchi.

This dispute was brought by the European Union against the use of “zeroing” by the United States both in antidumping investigations and, for the first time, in administrative review determinations. The panel followed the prior Appellate Body findings and, on that basis, distinguished between zeroing in investigations (inconsistent) and zeroing in reviews (consistent). The Appellate Body affirmed the panel’s finding with regard to investigations; however, with regard to administrative reviews, the Appellate Body rejected the panel’s reasoning and, instead, adopted a distinct line of reasoning to find that the United States’ use of zeroing in administrative reviews was WTO inconsistent. In this dispute, I drafted and supervised the drafting of most of the briefs submitted on behalf of the United States and argued the position of the United States before both the panel and the Appellate Body. Subsequently, I worked closely with attorneys from the Office of the U.S. Trade Representative both in the implementation dispute and in the negotiation with the European Union of the agreement on additional domestic actions that would lead towards resolution of the dispute.

Co-Counsel for the United States:

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an attorney in the Office of Chief Counsel for Import Administration, I participated in a number of matters that were resolved without litigation, as well as other matters that, despite litigation, nevertheless required a negotiated resolution. Four of the most significant examples are:

*Mexican Tomatoes Suspension Agreement:* This suspension agreement resolved a complex antidumping duty investigation involving tomato imports from Mexico. The investigation arose soon after the North American Free Trade Agreement went into effect and was a source of significant concern for the Government of Mexico. The suspension agreement that was entered into with the Mexican tomato producers relied on a rarely utilized provision of the law and effectively resolved this difficult issue.

*Comprehensive Steel Agreement with Russia:* In the late 1990's, Russia's emergence as a steel exporter was a matter of concern to domestic steel producers. After several antidumping investigations resulted in individual suspension agreements with Russia, the two governments entered into talks to seek a broader resolution with respect to steel trade. The novel solution we developed was an executive agreement, entered into pursuant to section 125 of the Trade Act of 1974, which established an export limit regime in effect for five years and covered 16 major categories of steel products. I participated in the negotiation of the agreement and was a primary drafter of the text.

*Doha Rules Negotiations:* The Doha Round of trade negotiations was launched in late 2001 and included a "Rules Negotiating Group." Within the mandate of that group is the World Trade Organization Antidumping Agreement, establishing the basic rules for conducting antidumping investigations and reviews of antidumping measures. I have been a member of the team representing the United States in these negotiations for almost a decade and have drafted or edited numerous formal and informal submissions to the negotiating group – taking into account both prior dispute settlement experience and concerns about potential future dispute settlement exposure.

*Informal Agreements with European Union and Japan Regarding Zeroing Implementation:* The use of so-called "zeroing" (not allowing non-dumped sales to offset the dumping found on other sales) was found to be inconsistent with the United States' obligations under the World Trade Organization Agreements in two disputes involving the European Union and one involving Japan. After those reports were adopted, the United States had a period of time to implement the reports. Follow-on disputes resulted in findings that the United States had not taken appropriate action to comply with the

findings and the European Union and Japan sought retaliation rights against U.S. exports worth hundreds of millions of dollars. Over a period of more than two years, I was a member of a team devoted to developing a defensible implementation approach and negotiating agreements with the European Union and Japan to allow that implementation approach to be put into effect and draw the disputes towards resolution.

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I am currently the Treasurer (uncompensated) for my local non-profit homeowners association of 42 homes. This association holds a small piece of common land and accounts at a local bank. As a current government employee, I recuse myself from any representation of the association before any federal government agency (e.g., I would not represent it before the Internal Revenue Service) and, if I am confirmed, I would continue to limit my role as the association Treasurer in the same manner.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).



See attached Net Worth Statement.

**24. Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife is a Principal with Capitol Counsel LLC. If I am confirmed, I would recuse myself from cases involving clients of Capitol Counsel. I also would recuse myself from all cases from the United States Department of Commerce, International Trade Administration, Import Administration for a period of 18 months, as well as any subsequent cases from Import Administration over which I had supervisory responsibility. Because of the statutory deadlines for completing the administrative proceedings, any determination appealed to the Court of International Trade after 18 months would likely have been initiated after my departure from the Department. I would use court procedures to identify the cases in which the conflicts could arise and I would take appropriate action.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If I am confirmed, I would follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult with applicable statutes and the Code and, if necessary, would seek advice from the Judicial Conference. In cases of uncertainty, I would err on the side of recusal.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Because of the conflicts that can arise as a government attorney providing pro bono services, I have not provided traditional pro bono services since becoming an attorney with the Department of Commerce. However, while I was in private practice, I provided pro bono services to an individual seeking political asylum based on the persecution he would have suffered if returned to his native country. In addition, I have served the community as a tutor for disadvantaged students in the District of Columbia. I have also devoted time to counsel current and former college and law students on government service opportunities.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2009, while I was on detail to the House Ways and Means Committee, I discussed my possible interest in becoming a judge on the Court of International Trade with the Staff Director of the Trade Subcommittee. In 2011, when I learned that two seats had become available on the Court, I again contacted the Staff Director to express my interest. In November 2011, the Staff Director forwarded my resume and statement of interest to the White House Office of Legislative Affairs.

Since April 13, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 23, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 12, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 109  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Barnett, Mark A.	2. Court or Organization U.S. Court of International Trade	3. Date of Report 07/12/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge - nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 07/12/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sh. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 06/15/2012
7. Chambers or Office Address Office of Chief Counsel for Import Administration U.S. Department of Commerce 1401 Constitution Ave., NW Room 3622 Washington, DC 20230		
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1. Treasurer      Chesterford Community Association

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Barnett, Mark A.	07/12/2012

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

## A. Filer's Non-Investment Income

☒ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

## B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.

(Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2011	Capitol Counsel LLC (salary)
2. 2012	Capitol Counsel LLC (salary)
3.	
4.	

## IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 28-32 of filing instructions.)

☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting Barnett, Mark A.	Date of Report 07/12/2012
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**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Barnett, Mark A.	07/12/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "X1" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					E Identity of buyer/seller (H: private transaction)
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)		
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)		
1. Brokerage Account #1					Exempt					
2. - SEI Tax-Managed Large Cap Fund	A	Dividend	L	T						
3. - SEI Tax-Managed Small Cap Fund	A	Dividend	J	T						
4. - SEI International Equity Fund	A	Dividend	K	T						
5. - SEI Emerging Markets Equity Fund	A	Dividend	J	T						
6. - SEI Intermediate-Term Muni Fund	B	Dividend	K	T						
7. - SEI High Yield Bond Fund	A	Dividend	J	T						
8. - SEI International Fixed Income Fund	A	Dividend	J	T						
9. - SEI Emerging Markets Debt Fund	A	Dividend	J	T						
10. - SEI Tax Free Fund	A	Dividend	J	T						
11. Brokerage Account #2										
12. - SEI Tax-Managed Large Cap Fund	A	Dividend	K	T						
13. - SEI Tax-Managed Small Cap Fund	A	Dividend	J	T						
14. - SEI International Equity Fund	A	Dividend	J	T						
15. - SEI Emerging Markets Equity Fund	A	Dividend	J	T						
16. - SEI Intermediate-Term Muni Fund	B	Dividend	K	T						
17. - SEI High Yield Bond Fund	A	Dividend	J	T						

1. Income/Gain Codes (See Columns B1 and D3)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 Q - Appraisal U - Book Value	H - \$1,001 - \$2,500 I - \$100,001 - \$1,000,000 L - \$15,001 - \$50,000 M - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 I1 - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M1 - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting Barnett, Mark A.	Date of Report 07/12/2012
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of spouse and dependent children; see pp. 14-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rem., or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
18. - SEI International Fixed Income Fund	A	Dividend	J	T					
19. - SEI Emerging Markets Debt Fund	A	Dividend	J	T					
20. - SEI Prime Obligation Fund	A	Dividend	J	T					
21. Brokerage Account #3									
22. - SEI Large Cap Value Fund	A	Dividend	K	T					
23. - SEI Large Cap Growth Fund	A	Dividend	K	T					
24. - SEI Small Cap Growth Fund	A	Dividend	J	T					
25. - SEI Small Cap Value Fund	A	Dividend	J	T					
26. - SEI International Equity Fund	A	Dividend	K	T					
27. - SEI Emerging Markets Equity Fund	A	Dividend	J	T					
28. - SEI Core Fixed Income Fund	B	Dividend	K	T					
29. - SEI High Yield Bond Fund	A	Dividend	J	T					
30. - SEI International Fixed Income Fund	A	Dividend	J	T					
31. - SEI Emerging Markets Debt Fund	A	Dividend	J	T					
32. Brokerage Account #4									
33. - SEI GNMA Fund	B	Dividend	M	T					
34. - SEI Core Fixed Income Fund	C	Dividend	L	T					

1. Income Code (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 - \$50,000 N - \$250,001 - \$500,000 P1 - \$250,001 - \$500,000 P3 - \$250,001 - \$500,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 Q - \$250,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 J2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Barnett, Mark A.	07/12/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 14-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. -- Income during reporting period		C. -- Gross value at end of reporting period		D. -- Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. - SEI Short-Duration Government Fund	A	Dividend	J	T					
36. - SEI Prime Obligation Fund	A	Dividend	J	T					
37. Brokerage Account #5									
38. - SEI Core Fixed Income Fund	B	Dividend	J	T					
39. Virginia Education Savings Trust, Potomac Portfolio		None	L	T					
40. Virginia Education Savings Trust, Aggressive Portfolio		None	K	T					
41. Virginia Education Savings Trust, Eastern Shore Portfolio		None	K	T					
42. Janus Twenty Fund	B	Dividend	J	T					
43. Congressional Federal Credit Union Accounts	A	Interest	M	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 Q - Appraisal U - Book Value	C - \$2,501 - \$5,000 H - \$100,001 - \$1,000,000 L - \$50,001 - \$100,000 R - \$500,001 - \$1,000,000 S - Assessment V - Other	D - \$5,001 - \$15,000 I1 - \$1,000,001 - \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cink Market W - Estimated	E - \$15,001 - \$50,000 I2 - More than \$5,000,000 P3 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000
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**FINANCIAL DISCLOSURE REPORT**

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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
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## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Mark A. Barnett*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		102	658	Notes payable to banks-secured (auto)		14	213
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		626	461	Notes payable to relatives			
Unlisted securities – see schedule		125	565	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		337	534
Real estate owned – personal residence		725	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		429	811				
				Total liabilities		351	747
				Net Worth	1	657	748
Total Assets	2	009	495	Total liabilities and net worth	2	009	495
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**

## NET WORTH SCHEDULES

Listed Securities

Alcatel-Lucent stock	\$ 80
Janus Twenty Fund	9,219
SEI Core Fixed Income Fund	99,239
SEI Emerging Markets Debt Fund	22,118
SEI Emerging Markets Equity Fund	23,331
SEI GNMA Fund	106,462
SEI High Yield Bond Fund	22,158
SEI Intermediate Term Municipal Fund	80,175
SEI International Equity Fund	46,751
SEI International Fixed Income Fund	28,047
SEI Large Cap Growth Fund	30,959
SEI Large Cap Value Fund	32,263
SEI Prime Obligation Fund	1,752
SEI Short-Duration Government Fund	14,643
SEI Small Cap Growth Fund	5,320
SEI Small Cap Value Fund	5,128
SEI Tax Free Fund	2,249
SEI Tax Managed Large Cap Fund	82,829
SEI Tax Managed Small Cap Fund	13,738
Total Listed Securities	<u>\$ 626,461</u>


Unlisted Securities

Virginia Educ. Savings Trust Aggressive Portfolio	28,520
Virginia Educ. Savings Trust Eastern Shore Portfolio	16,002
Virginia Educ. Savings Trust Potomac Portfolio	81,043
Total Unlisted Securities	<u>\$ 125,565</u>

AFFIDAVIT

I, Mark A. Barnett, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

July 16, 2012  
(DATE)

  
(NAME)

  
(NOTARY)

Sandra E. Lambright  
Notary Public, District of Columbia  
My Commission Expires 07/17/2013

Senator SCHUMER. Thank you.

Okay, we will begin with questions, and I guess as Chair I will take that prerogative. This is a two-part question for all of the nominees.

First, tell us a little bit about why you want to be a judge, how you believe your experiences up to this point will help you do the job.

And, second, moderation and judicial modesty are two qualities that I certainly value in a potential judge. I think many of my colleagues do as well. What do these concepts mean to you?

We will start with Ms. Failla.

Ms. FAILLA. Thank you for the question, Senator. I have been blessed to have a number of experiences in both the criminal and civil sides of the law and in seeing really the full flavor of the judicial system. And after spending many years defending private clients, I found that my calling was in public service, and so after 12 wonderful years at the U.S. Attorney's Office, I have looked to the possibility of becoming a judge to continue this career of public service and helping others.

My experiences as a lawyer for a law firm and as a prosecutor have taught me, again, all sides of the judicial system. In particular, as a criminal prosecutor, I have learned the importance to individual litigants of the cases that they have, and especially for criminal defendants, of the dignity of criminal defendants and the importance to them of getting their case right. And I believe those are the experiences that I would bring to bear if I were fortunate enough to be confirmed.

With respect to judicial modesty and moderation, I think that comprises several elements. I think critical to it is the concept of stare decisis, the idea that we are bound by precedents, because it is that consistency and predictability that gives trust in the judicial system.

Additionally, I think another component of modesty is the notion that you are deciding only the case in controversy before you and that a judge would not go out of his or her way to decide other issues.

Thank you.

Senator SCHUMER. Thank you.

Ms. Chen.

Ms. CHEN. Thank you, Senator. As a career public servant and prosecutor and as someone who values and believes in the ideals of our justice system, I cannot think of any greater honor or better way to continue serving the public than to be a federal district court judge.

I believe that my entire career, which has been both in civil litigation and criminal prosecution, has prepared me for this role and has taught me what the qualities of a good judge are, which include fidelity to the rule of law, even temperament, fairness, impartiality, decisiveness, and the qualities that you mentioned, Senator, judicial modesty and moderation, which mean, to me, understanding the limited role of the judiciary in our constitutional system of government, as well as what Ms. Failla said, which is following stare decisis and precedent.

Senator SCHUMER. Thank you.

Judge Nunley.

Judge NUNLEY. Well, I am a judge, and before I became judge, I served as a prosecutor, I have served as a general practitioner, I have served as an appellate attorney. I was very fortunate in that when I served as a prosecutor, I was approached by several judges who felt that I had the demeanor, the impartiality to serve on the bench, and they requested that I submit my name.

Becoming a judge was a natural progression for me after being a prosecutor and an appellate attorney. As a State superior court judge, once again I was approached by several federal judges who felt that I had the qualities to be a federal judge. And I might add that some of those qualities, a lot of those qualities between a federal judge and a State court judge, they are very similar qualities. Judges at all levels are required to operate impartially, listen to the litigants, be fair to both sides, and issue rulings without regard to their personal beliefs. And I feel I have done those things. I think those experiences have helped me be not only a State court judge, but if I am lucky enough to be confirmed, I think they will help me be a federal judge as well.

The question about moderation and judicial modesty, I will split those questions up, because I think judicial modesty has a lot to do with issues surrounding precedent, following precedent, the ability to follow precedent and stare decisis. Obviously, I have done those things. I have been a State superior court judge. I am bound by the highest court, State court in California, and that is the California Supreme Court. My appellate district is the Third Appellate District, so I am also bound by those precedents from those two bodies.

On moderation, my belief is moderation is what we show to the public in terms of being impartial, listening to the litigants, being active listeners, not only listening to what the litigants have to say but also being transparent and letting the litigants know why we are ruling in the manner which we are ruling, for example, not considering issues such as pity, bias, compassion, and those issues. It is incumbent upon judges—and I think I have done that throughout my judicial career—to let the litigants know that we are not dictated to by those notions.

Thank you very much for the question.

Senator SCHUMER. Thank you, Judge.

Judge CHAPPELL. Thank you. When I first decided that I wanted to become a judge, it was really because of my love for the law and my love of the courtroom. Having been a judge now for 12 years, I can tell you that my love of the law and love of the courtroom has not diminished in any respect. I believe that I have brought forward the appropriate demeanor to the bench. I believe that a jurist has to be calm in the courtroom, act with integrity, and respect the individuals that come before them, whether that be the litigants, the attorneys, or the court personnel. And a judge can lead from the bench in that respect and to show those particular qualities, as well as, obviously, looking at the precedent that is set by the Supreme Court, ruling appropriately to that, and in my case the 11th Circuit Court of Appeals.

Thank you, Senator.

Senator SCHUMER. Mr. Barnett.

Mr. BARNETT. Thank you, Senator. I think we all know and appreciate the importance of international trade, and I think with my over 20 years of experience in the international trade field, I would be able to make important contributions to the critical work of this court in the area of international trade.

In the area of modesty and moderation, I would agree with the comments that some of my other panelists made with regard to the importance of precedent. I think what I would add in terms of the specifics of the Court of International Trade is that much of their work involves the review of agency determinations, and in that area it is critical to follow the appropriate standard of review. We are reviewing determinations to ensure that they are made in accordance with law and based on substantial evidence. And it would be my role, if I am fortunate enough to be confirmed, to ensure that I am not substituting my judgment for the judgment of the agency and apply the appropriate standard of review to those cases.

Thank you.

Senator SCHUMER. Thank you, Mr. Barnett.

I will call on my colleague and Ranking Member, Senator Grassley.

Senator GRASSLEY. I have different questions for different nominees, and I do not do "gotcha" questions, so do not feel defensive. And the shorter the answer, the better.

For Mr. Barnett, you have in your questionnaire said about appearing in court a couple times. Could you elaborate on your courtroom experience, whether in U.S. courts or international trade tribunals? And if so, indicate how many times you appeared before one of these bodies as either lead counsel or co-counsel.

Mr. BARNETT. Thank you for the question, Senator. In terms of specifically domestic courts, I participated in two court proceedings when I was in private practice, and during my time at the Department of Commerce, I appeared in more than a dozen cases before the Court of International Trade.

In addition to that work, I have also—sorry, let me add, in that role at the Department of Commerce, the chief representative for the executive branch is the Department of Justice, so I would appear there as counsel. It would be the Department of Justice who would argue the case, but the attorneys at the Department of Commerce are very involved in preparing the briefs and preparing the Justice attorneys for the argument.

In terms of international tribunals, I argued before, I believe it was, at least three NAFTA panels and probably more than a dozen World Trade Organizations panels and appellate body proceedings. In those cases, before NAFTA panels, our office has prime litigating authority, and I argued a number of issues before each of those panels. With regard to the World Trade Organization, technically the U.S. Trade Representative's Office has the primary, the lead role before them; however, we are also very active in arguing the cases before those panels and before the appellate body. And as I said, I participated in well over a dozen cases before panels and the appellate body.

Thank you.

Senator GRASSLEY. What judicial philosophy would guide your judicial decision making?



Mr. BARNETT. Thank you, Senator. I think my judicial philosophy would involve both fairness—fairness to the parties, maintaining an open mind with regard to the arguments being made, and then ensuring that my decisions are based on the statute, are based on applicable precedent, and that, as I mentioned earlier, involve me very much applying the appropriate standard of review to my review of any agency determinations.

Thank you.

Senator GRASSLEY. For Ms. Chappell, you gave a presentation at Canterbury School entitled “Open Doors to the Federal Courts.” In one of the slides you used during a presentation, you indicated that one of the goals of a fair court is to have diversity on the bench. So kind of a short definition of diversity from your point of view, and could you explain how diversity on the bench relates to the words you used, “fair court”?

Judge CHAPPELL. All right. Thank you, Senator. That was a presentation that I made to a group of school children, many of which I had during the course of being a judge.

In regard to diversity on the bench, I think it is important we all bring our experiences to the bench. It is very important to have different individuals on the bench, whether they—and coming from different backgrounds.

In regard to diversity, I think it is important that you have diversity also and the ability to have individuals who come into your courtroom so that you are fair to them, you are impartial to them, and you base your decisions on the law and the precedent before you.

Senator GRASSLEY. You made a statement in lectures to judges, “Judges have a tremendous unwillingness to admit what they do not know.” How do you approach this problem when you find that it relates to you?

Judge CHAPPELL. Thank you, Senator. That particular quote came from teaching judges computers, and I go across the country and teach judges computers and how to use computers to make their jobs more efficient.

Senator GRASSLEY. I do not think you have got to go any further.  
[Laughter.]

Senator GRASSLEY. Ms. Chen, during some of your career, you have been involved in party politics, and there is nothing wrong with that, so do not get defensive about it. But should you be confirmed, your political history might concern future litigants. Can you assure the Committee that, if confirmed, your decisions will remain grounded in the precedent that you have already referred to and the text of the law rather than underlying political ideology? And what further assurances or evidence can you give the Committee and future litigants that you will be fair in all who appear before you? That is the only question I have for you.

Ms. CHEN. Thank you, Senator. Absolutely I can assure you that politics would play no role in my decision making, were I fortunate enough to be confirmed, and the assurances I can give are based on my career as a public servant and working for the Department of Justice. No one could accuse me ever of making a decision based on any kind of political ideology, and I think my record speaks for itself over the last 20 years.

Senator GRASSLEY. I may submit a question for answer in writing that I do not want to take time now to ask.

Let me go on to Ms. Failla. In the past, the President has stated that judges must base their rulings on “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy.” My concern is that when someone suggests a judge should have empathy, they are really suggesting that judges should place their thumb on the scales of justice to tilt in favor of one party or the other—and I do not mean political party.

As a panelist on the topic of white-collar crime, you were asked to comment on the humanizing factors relevant to sentencing and how such factors could contribute to judicial departures from the Sentencing Guidelines. You responded, “I think from our perspective that we do not often get involved in humanizing the defendant. It is our place to humanize the victims of the offense.”

To what extent does empathy have a place in the judicial process?

Ms. FAILLA. Your Honor, as—I am sorry, Senator. That was nice. [Laughter.]

Ms. FAILLA. Senator, as you have defined empathy in this question, which is suggesting putting a finger or thumb on the scales of justice, it has no place in making decisions. My job, were I fortunate enough to be confirmed, would be to decide the case before me on the facts before me and on the law, principally as decided by the Supreme Court and the Second Circuit, for where I would be sitting.

Certainly people’s factors and characteristics may come into play, but the point of our judicial system is that the decisions should be consistent, they should be decided based on law and not based on any personal feelings for any of the litigants.

Senator GRASSLEY. A follow-up. Not a follow-up on that, but another question. As a panelist on ethics and litigation, you have commented on how joint defense agreements are viewed by prosecutors generally. If confirmed as a federal judge, how will you address this issue if it comes before you?

Ms. FAILLA. I will address it based on the law, Your Honor. I will address—I keep calling you “Your Honor.” I hope you appreciate that, Senator.

Senator GRASSLEY. Any farmer would appreciate that.

[Laughter.]

Ms. FAILLA. I will follow the law, the Supreme Court, and the Second Circuit.

Senator GRASSLEY. And, Mr. Nunley, you will be my last question. I am concerned about your lack of federal court experience even though I know you have a lot of experience in State court. In your questionnaire, you have very little federal court experience in your legal career. As a State judge, you do not have the opportunity to review federal issues.

What steps will you take to be prepared to assume the duties of a federal judge if confirmed? And what assurances can you provide to this Committee and to future litigants that your judgment on federal law and procedure will be sound and firm?

Judge NUNLEY. Well, I am aware that there are a number of resources available to federal court judges, and if I am fortunate enough to be confirmed, I intend to avail myself of those resources. For example, the Administrative Office, I know they provide various resources for incoming federal judges in terms of materials, training sessions. I think it is also important that I review and study federal procedural law, federal evidentiary law. And I also think it is important that I talk to my fellow federal judges and get my cue from them.

And I might add, Senator Grassley, I was a prosecutor with the State Attorney General's Office of the Department of Justice. As a member of the State Department of Justice, I did appear in federal court on a number of occasions in habeas petitions. Right now, California has the highest filings, as you well know, and most of those filings are habeas petitions. I have vast experience with habeas petitions in working for the State Department of Justice, so I have practices in federal court. Obviously, while I was a private practitioner, I did several federal civil rights cases in federal court. And I might add there are a lot of parallels between being a judge in a State court and being a judge in federal court. I mentioned some of those issues, and I am prepared to hit the ground running. And I have always had a tremendous work ethic, and that will not stop now.

Senator GRASSLEY. Okay. In my statement I did not give because I put it in the record to save time, I complimented you folks and honored you for your appointment and I welcome you. Thank you.

Ms. FAILLA. Thank you.

Ms. CHEN. Thank you, Senator.

Judge NUNLEY. Thank you.

Judge CHAPPELL. Thank you.

Mr. BARNETT. Thank you.

Senator FRANKEN [presiding]. Thank you, Senator Grassley. Senator Schumer has asked me to take over the gavel. I will be here through the end, so if Senator Lee would like to ask questions now, why don't you go ahead, Senator?

Senator LEE. Thank you very much, Mr. Chairman. Thanks to all of you for being here and congratulations on being nominated.

Why don't we start with you, Ms. Failla. You are at the far end. We will start there. I want to get back to the question a minute ago that Senator Grassley was discussing with you just about the comment that you made about humanizing the defendant versus humanizing the victims. I assume that in making that comment you were referring in part to the fact that you were an AUSA at the time you were making the statement.

Ms. FAILLA. Not only was I an AUSA, I was brought into that panel as the chief of the office's Appeals Unit. This was a panel on post-Booker trends in sentencing, and I believe the point was that there was discussion among the panelists and for those in the room regarding when it was appropriate or when it was available to bring to bear factors about the defendant. It is not—it was not my place as a prosecutor to be speaking about humanizing the defendant. I believe someone else may have mentioned that. What we were talking about was the fact that in deciding—in presenting information to a sentencing judge, the prosecutor and the defense

have an obligation to present all the facts regarding the individuals affected by the crime in question.

Senator LEE. Okay. So the discussion was really more about crime victims than it was the rights of the defendant, and you were directing the conversation where you felt the question before you naturally went, in other words.

Ms. FAILLA. I can speak better to the issue of victims than I can to the defendant.

Senator LEE. Yes, particularly as a prosecutor, and particularly on appeal. Normally, you are not getting into the humanizing of the defendant on appeal as a prosecutor defending the conviction and the sentence of a criminally convicted person.

Ms. FAILLA. That is correct.

Senator LEE. That leads into my next question, though, and it is good to know that this was in the context of a *Booker*, *Blakely* type of a discussion, because that was going to be my next line of questioning. Do you think any of that has changed in the post-*Blakely*, *Booker* world? That is to say, let us step away from that conversation, that statement, that panel discussion for a minute and just ask the question in the abstract, since if confirmed as a district judge you will be involved in sentencing decisions probably every day you are on the bench. I am sure you will have that change of plea script that you probably already know from your years as a prosecutor. You will be saying that in your sleep incessantly.

But in the post-*Blakely*, *Booker* world, is there more of an opportunity for district judges to humanize the defendant?

Ms. FAILLA. I suppose there is an opportunity, but I think what is important is that what has been made clear since *Blakely* and *Booker*—it is on. I will try and speak closer to it. Excuse me. What I think is important about post-*Booker* and post-*Blakely* is that circuit courts, including the Second Circuit in which I practice, have again confirmed the importance and significance of the guidelines. I think the guidelines are often referred to as the starting point or the benchmark for sentencing, and I think it is very important for judges to recognize that role, because to the extent there are differences among sentences, it should be because of the facts of a particular case and not because of the judge before whom the defendant is sentenced.

So while I do think that there are efforts made post-*Booker* and *Blakely*, and perhaps even beforehand, to bring to bear or to bring to the court's attention facts concerning the defendant, I think, again, the guidelines remain critically important to the sentencing process.

Senator LEE. So, in other words whether or not the facts and circumstances of a case are such that they might take the case outside the heartland such that you would depart from the guideline recommendation at that point are not necessarily described anyway as factors that bear on the humanization of a defendant; they are factors that bear on the nature of the offense, rather.

Ms. FAILLA. That is correct, Your Honor.

Senator LEE. That is okay.

Ms. FAILLA. I keep doing it.

Senator LEE. It is not as if "Your Honor" is a bad thing.

[Laughter.]

Senator LEE. You have elevated me in some respects.

Ms. Chen, why don't we go to you next? You are next closest to the table. On matters of interpretation, when you are looking at a statute, if confirmed as a federal judge, you will be called upon to interpret statutes all the time, probably every day. And by the smile on your face, I can tell that you are excited about that, and that is good. That speaks well of your enthusiasm for the task.

When you do that, sort of the judicial modesty that we talked about earlier that my friend Senator Schumer referred to, I think that is a good question, and it is one that bears significantly on the task of statutory construction and interpretation.

Now, in your answer, I thought your answer was good. I liked what you said about judicial modesty. In your answer, you referred—in the nub of your answer, you got right to the point of precedent, following precedent, the effect of *stare decisis* and so forth.

Neither of those, of course, deals specifically with statutory interpretation. What will guide you when you interpret a statute? And if I can add another layer to that question, how do you—when you look at a statute, are you more likely to be trying to discern and be guided by the words themselves or by your own perception of the subjective intent of the legislative body that passed the law?

Ms. CHEN. Thank you, Senator, for that question. Certainly the former rather than the latter, meaning the plain text of the statute is what is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there.

If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in my district, which would be the Second Circuit, and the Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful. And then, last, if all else failed, looking again also to the legislative history would be another source of divining the meaning of the statute as Congress intended it.

Senator LEE. Assuming you cannot get there using the canons of statutory construction. Without that, then you look extraneously. And yet the body of case law has developed, oddly enough, that we have these vestigial remains of old cases such that you will still find language on the books from a lot of the cases talking about statutory interpretation where they will say, "We are guided by the intent of the legislature," or "Our effort here is to discern the intent of Congress." And yet there is also language in there that should usually be added, if not replacing the language I just quoted, which says, "The way you discern the intent of the legislature is by the language that they use." And I always wish that that would come first and actually replace the intent, because if you start by saying we are trying to figure out what they intended, it might lead you astray.

That is my soap box. Do you have any reaction to that?

Ms. CHEN. I believe that the process, the canons of construction that you referred to earlier eliminate that issue to a large extent

and address the concern that you raised about judges overstepping their bounds and trying to interpret what Congress meant without looking at the plain language first and going through all the other steps first.

Senator LEE. Excellent. Thank you very much.

Thank you, Chairman.

Senator FRANKEN. Thank you, Senator.

Why don't I send it off to Senator Blumenthal. Go ahead.

Senator BLUMENTHAL. Thank you, Senator Franken.

Thank you to you all for your willingness to serve. I am sure that others have told you, you know yourselves, that service on the district court is crucially important to our justice system. You are the voice and the face of justice to countless people who will never have recourse to an appeal, either because they cannot afford it or because the odds of succeeding are so great given the strength of either a jury verdict or your decision on the law. Whether it is immigration ceremonies that I attend regularly or sentencing or many other public events and private chambers conference, you will impact the lives, I would dare say, of more people directly than a lot of people in this body do, which is a very sobering thought.

And so I want to ask you, maybe each of you, what values you think are most important to a judge, and you can do the row beginning with Ms. Failla.

Ms. FAILLA. Thank you, Senator, for that question. I think in addition to having just fundamentally a deep and abiding sense of fairness, I think that it is important to listen to the litigants, to make sure not only that they are heard but that they understand that they are heard by the judge, to steep oneself in the factual record, to make sure you understand all of the facts that come to play in the resolution of the dispute, to look at the law seriously and fairly and impartially, and then to give a decision that is both fair and understandable to all and transparent. And I think if you do that, you can communicate to the litigants and to the broader public the fairness of the judicial system.

Senator BLUMENTHAL. Good answer.

Ms. Chen.

Ms. CHEN. It is hard to improve on that answer, Senator. However, I would add in addition to everything that Ms. Failla said, which I wholeheartedly agree with, that respect and fidelity for the rule of law is paramount as well as impartiality and fairness and even temperament; also being decisive and ruling decisively, and as Ms. Failla said, being transparent about the basis of the decision, which, I should add, would address the concern that I think Senator Grassley raised with me about concerns of any political motivations, that that would eliminate any concern if you rule transparently and explain to people the basis that it is based on law.

And, last, I would add also that the willingness to be open-minded to all points of view is important.

Senator BLUMENTHAL. Very good.

Mr. Nunley.

Judge NUNLEY. All right. I have been a judge for a little over 10 years, and on a daily basis the values that I think are important are—and I think my colleagues have said the same thing—is fairness, and being fair to both sides, and realizing that any decision

I make on a given day, someone is going to walk out that door disappointed. It is a 50/50 chance that I might rule in your favor. However, the one thing that the litigants should be able to say, regardless of whether they win or lose, they should be able to walk out that door and said, "I had a fair shot. I was heard. He understood my argument, and I understood why he reached that decision."

I also think it is important to have a proper judicial temperament. I think it is important to be fair to both sides, to be an active listener, not only to listen to the litigants but also to question the litigants about their arguments so that they know that you understand their arguments. That is a part of active listening that most judges throughout this country engage in.

But I think the most important, the scales of justice have to mean something, and I think it is important that when those litigants walk in the court they have a notion that this judge has a reputation of being fair, and when they walk outside that court, they have a notion that this judge was fair. And I think those are important elements.

Senator BLUMENTHAL. Good.

Judge CHAPPELL. Thank you, Senator. I think I like your characterization that we are the face of justice as being judges, and having been a judge now for 12 years, I like to live by example. I like to lead by example. I think that a judge has to have the integrity and the ability to sit in the courtroom and listen very carefully to all of the litigants and the attorneys and, as I mentioned earlier, the courtroom staff. If you lead by example, I think people will follow. You have to be a good listener, and you have to impart that each litigant that comes before you, their case is just as important to you as it is to them, and I like to live by those principles.

Senator BLUMENTHAL. I think those are all really excellent answers and will stand you in good stead. I think, you know, personal qualities are in many ways more important than, you know, the place you went to school or where you practiced law or the kinds of cases you handled, because judging is such a different activity than anything else in life. I think that you have identified listening, fairness, patience, leading by example—excellent answers.

I have just one more question, if I may, Mr. Chairman, to Mr. Barnett. Do you have issues—and I apologize if I am repeating a question that you have already answered—that you feel are predominantly important on the docket of the U.S. Court of International Trade that you would either like to see addressed or you believe will be addressed?

Mr. BARNETT. Thank you, Senator. I would not separate out any individual issue that is on the docket of the Court of International Trade right now. There are a number of issues that the court is facing. There are a number of important aspects of international trade that are moving forward.

One of the areas where I have done a bit of writing over the past couple of years has been on the intersection of domestic law with international law and the fact that we often have parallel dispute settlements—dispute settlement in the international context, domestic litigation in that context—on the same issue. And I think the one thing that has come out to me through some of that re-

search and writing is the importance of timely decision making by the domestic courts so as not to become in a sense a holding tank for other governments while they pursue their international disputes. So that is one area that has been of particular interest to me lately.

Thank you.

Senator BLUMENTHAL. Thank you. Thank you very much for each of your service in the past and your service in the future, and I hope that the Senate and the Congress can be as supportive as possible to our federal judiciary at every level. Thank you very, very much.

Ms. FAILLA. Thank you.

Ms. CHEN. Thank you, Senator.

Judge NUNLEY. Thank you, Senator.

Judge CHAPPELL. Thank you.

Mr. BARNETT. Thank you.

Senator FRANKEN. Well, thank you, Senator, and thank you all, and congratulations to you all for your nominations.

Several of you have worked on domestic violence and sex-trafficking cases. Ms. Failla—and you can call me “Your Honor” if you wish.

[Laughter.]

Senator FRANKEN. When you were in private practice, you handled a pro bono matter through the Battered Women’s Legal Services Project. Judge Nunley, when you were Deputy Attorney General in California, you did a lot of work on domestic violence and stalking, among other issues. And, Ms. Chen, as an Assistant U.S. Attorney, you successfully prosecuted several sex-trafficking cases.

In April, the Senate passed a bipartisan *Violence Against Women Reauthorization Act*. Unfortunately, we have not been able to enact this bill into law yet, and I really hope we can get that done soon.

Based on your own experiences in the field, could each of you explain why it is so important that local law enforcement and local advocacy organizations have resources devoted specifically to addressing domestic violence, sexual assault, and trafficking? We will start with Ms. Failla.

Ms. FAILLA. Well, I feel like that that is sort of outside of my bailiwick because I have not dealt with it in so long. But I certainly understand the policies behind funding of local law enforcement agencies to assist with domestic violence because I have seen through my practice and in the representation that I had the havoc that it wreaked on not only the woman in question but her family. So to the extent that funding could remediate that or, better yet, prevent that from happening, I certainly think that would be a good thing.

Senator FRANKEN. Ms. Chen.

Ms. CHEN. Thank you, Senator. I am very happy that you asked this question. As you mentioned, I have worked extensively in the area of sex trafficking, and I have been extremely fortunate and proud to work with federal law enforcement, local law enforcement, and local advocacy groups in both rescuing victims of sex trafficking and also prosecuting cases involving heinous crimes against trafficking victims.



The importance of local law enforcement and local advocacy agencies in this process I can attest to personally because of the nature of the crime being so hidden. And, therefore, it is essential that first responders and people in these communities are able to help identify victims of trafficking, help provide support to them, and help bring them to the attention of the federal authorities. And we have done that in countless cases.

Senator FRANKEN. Thank you. I appreciate that answer. I think that some people do not understand the *Violence Against Women Act* and that it is about getting resources to organizations like that and to law enforcement and to other advocacy organizations to help the victims and survivors.

Judge Nunley.

Judge NUNLEY. I think the reason why local agencies devote such vast resources is very simple: That is very much of what they do, respond to domestic violence cases, sex-trafficking cases where they are dealing with the most vulnerable members of society. They are dealing with young girls on a lot of occasions. But many cases that they deal with on a daily basis and, quite frankly, on a nightly basis involve domestic violence. We also serve as magistrate judges, so during any given month, we are required to help law enforcement facilitate emergency protective orders, and most of those emergency protective orders involve domestic violence cases. The law enforcement officers are overwhelmed. That is why in Sacramento County we started a dedicated court. It is a domestic violence court that is dedicated solely to domestic violence. We have some very dedicated judges who preside over those cases. They have a very good scheme for dealing with batterers. And as a prosecutor, I was also instrumental in helping set up that very same domestic violence court years ago. When I was working in the district attorney's office in Sacramento County, we helped set up that court and helped get that whole thing running. So it is very important in terms of the resources because law enforcement, quite frankly, they deal with those issues on a daily basis and they deal with it quite a bit.

Senator FRANKEN. Thank you. And those resources are part of what the *Violence Against Women Act* is about. I sometimes would read comments about VAWA and see people would not understand that, and they would say, "Well, isn't violence against women already illegal?" And they do not understand what the Act was about. Judge Chappell.

Judge CHAPPELL. Yes, I have had the opportunity through different walks of life to deal with the problems that domestic violence victims have. As a prosecutor, I prosecuted crimes involving domestic violence. I sat on a domestic violence task force, and I was instrumental in training many of the first responders in the types of evidence that they needed to collect to ensure that there was evidence to use later on if a prosecution became necessary.

As a State court judge, I was involved in hearing domestic violence cases that came before me, the individuals who were charged with the crime of domestic violence. And now as a federal judge, as a federal magistrate judge, I do have the opportunity as well to hear cases and listen to issues of human trafficking that come before me. And I would say that education is key. It is very important

that people understand the nuances of the crime of domestic violence or human trafficking and they can respond to that based on their knowledge.

Senator FRANKEN. Thank you all. I understand that Senator Lee has a couple more questions, so I will yield to him.

Senator LEE. Thank you very much, Mr. Chairman. I just had a couple more questions.

First, Judge Nunley, I admired your resume as I looked through it and discovered that in 1994 you broke off and formed your own practice, and you did that for a couple of years before going on to your next government assignment. That speaks well for your courage.

[Laughter.]

Senator LEE. I always wanted to do that when I was in private practice and never quite had the courage to do so. How does courage play a role in judging?

Judge NUNLEY. Well, I think as a judge you are making very important decisions. You have to have the courage to make those decisions, irrespective of media, the public outcry. In some cases the victim may not be satisfied with the particular sentence that you are handing down. You have to be able to withstand that, and you have to be able to go into that with the notion that those outside factors are not going to dictate how you act as a judge.

I have been a judge for over 11 years—or over 10 years, and going on 11 years—and during the course of my career, I have had to withstand that scrutiny. And, quite frankly, the only thing we have to fall back on is our courage, our conviction to make the decision according to the law, according to precedent, and I have never shirked that responsibility.

Senator LEE. Even when it is unpopular?

Judge NUNLEY. Even when it is unpopular. That is absolutely correct.

Senator LEE. I think that is why we have judges wear those big black robes.

[Laughter.]

Senator LEE. It makes you look bigger and, therefore, more intimidating and gives you a greater sense of courage. That is right. I hope you will stick with that same sense of courage that helped you feel comfortable forming your own practice. It will and I am sure already has helped you as a judge.

Judge NUNLEY. Thank you.

Senator LEE. Judge Chappell, you have been a federal magistrate now for about a decade or so. Prior to that time, your practice had been overwhelmingly in the State court system and overwhelmingly criminal. You have now had a chance over the last decade as a federal magistrate judge to be involved both in civil and in criminal matters in federal court. And I am sure you have seen the importance of your dispositive motions aspect of your docket and the fact that your dispositive motions, particularly in civil cases, can end up consuming a lot of time and certainly is part of what either keeps the federal litigation system moving or can quickly clog it up.

So my question relates to dispositive motions, particularly in the context of civil litigation. There are two competing schools of thought. One school of thought is that when you have got a disposi-

tive motion, if it is a close case, always err on the side of denying the dispositive motion—in other words, in order to allow the case to proceed to trial. After all, let the parties have their day in court, let them go to a trial, if you have the least bit of doubt as to whether or not dispositive relief is in order. The other school of thought is, no, find the right answer because to deny a dispositive motion is every bit as bad as granting one where one is not warranted.

I also fear judges sometimes have a built-in incentive to deny when in doubt because it is easier to deny the dispositive motion. After all, that is normally not going to be appealable, at least not at the moment, and then you do not have to write an opinion. You just issue a short statement denying it.

So how do you balance that? Which school of thought do you cling to when it comes to dispositive motions?

Judge CHAPPELL. Thank you, Senator. I think it kind of dovetails back into what you asked Judge Nunley. Making the hard decisions sometimes is not popular. You are not always popular being a judge and having to make those hard decisions.

I try to look at every case that comes before me, whether that be for report and recommendation to the district court or whether that be something that I am working on that will, as you said, be dispositive and look at the facts involved.

I think that I tend to look at the facts and make that hard decision. If the decision is that the case should move forward to trial, then that to me is the right decision because I have given a well-reasoned, thought-out opinion on that, whether it be by R&R, report and recommendation, or actually writing an order myself.

If it is that the summary judgment, for example, should be granted and that means that the case would not move forward based on that, that is the hard decision that a court is called on to make. I have made those decisions for the past 12 years now of being a judge, three in the State system and now nine as a federal magistrate judge. And if I am confirmed as a United States district court judge, I would continue to make those hard decisions.

Senator LEE. Thank you very much. Thanks to all of you for your testimony and for your willingness to serve.

Thank you, Chairman.

Senator FRANKEN. Thank you, Senator Lee. And I do take issue with Senator Lee on why judges wear those big black robes. But I have nothing to base that on.

[Laughter.]

Senator FRANKEN. Congratulations again to each of you and to your families, and thanks for your testimony today. We will hold the record open for one week to allow Senators to submit questions and materials.

In addition, I would like to submit the following materials for the record: a statement from Senator Boxer in support of Judge Nunley; four letters in support of Pamela Chen's nomination. Those letters are from James Hayes of the Department of Homeland Security, the National Association of Asian Pacific American Prosecutors, the Constable of Maricopa County, and a group of AUSAs, which is what you are, in New York.

[The information appears as a submission for the record.]

Senator FRANKEN. This hearing is adjourned.

Ms. FAILLA. Thank you.

Ms. CHEN. Thank you.

Judge NUNLEY. Thank you.

Judge CHAPPELL. Thank you.

Mr. BARNETT. Thank you.

[Whereupon, at 11:22 a.m., the Committee was adjourned.]

**Statement of Senator Chuck Grassley  
Before the Committee on the Judiciary  
On the Nominations of:**

*Katherine Polk Failla, to be United States District Judge for the Southern District of New York*

*Pamela Ki Mai Chen, to be United States District Judge for the Eastern District of New York*

*Troy L. Nunley, to be United States District Judge for the Eastern District of California*

*Sheri Polster Chappell, to be United States District Judge for the Middle District of Florida*

*Mark A. Barnett, to be a Judge of the United States Court of International Trade*

**September 19, 2012**

I join you in welcoming the nominees, their families, friends, and other guests. We have four District Court nominees before us today, as well as a nominee to the Court of International Trade.

With today's hearing, during this Congress we have convened 28 nomination hearings for 112 judicial nominees. In total, the Senate has confirmed 156 District or Circuit nominees. So I think the Committee has made good and steady progress in confirming judicial nominees. This year alone, we have confirmed 34 lower court judges, which is

significantly higher than were confirmed in the last Presidential election year.

Again, I welcome the nominees and I look forward to this hearing. I will place the balance of my statement in the record regarding the biographical information on each nominee.

Ms. Failla received her J.D. from Harvard Law School in 1993. Upon graduation, Ms. Failla clerked for Joseph E. Irenas, a United States District Court judge for the District of New Jersey, from 1993 – 1994. In 1994, Ms. Failla joined the firm of Morgan, Lewis & Bockius, where she worked as an associate attorney until 2000. There, she handled issues involving bankruptcy, contracts, intellectual property, attorney-client privilege in the corporate context, and the work product doctrine.

Since 2000, Ms. Failla has worked for the United States Attorney's Office for the Southern District of New York. As an Assistant United States Attorney, Ms. Failla prosecuted a variety of offenses, including firearms trafficking, narcotics

trafficking, art fraud, child pornography, immigration offenses, money laundering, private placement fraud, foreign exchange fraud, and market manipulation. Ms. Failla was promoted in 2008 to Chief of the Criminal Appeals Unit, a position she currently holds. In this capacity, Ms. Failla consults with other prosecutors to identify and resolve issues prior to appeal. These issues include the appropriate manner of conducting investigations, the decision to bring criminal charges, the Government's response to substantive defense motions, and legal and evidentiary issues that may arise during the course of a prosecution.

Ms. Chen received her B.A. from the University of Michigan in 1983 and her J.D. from Georgetown University Law Center in 1986. Upon graduation, Ms. Chen joined Arnold & Porter as an associate who specialized in civil litigation. In 1989, she joined the law firm of Asbill, Junkin, Myers & Buffone and worked primarily in criminal defense matters, although she also handled some civil cases involving tort litigation, trusts and estates, and RICO litigation. In 1991, she joined the Special Litigation Section of

the Civil Rights Division at the United States Department of Justice. There, she investigated and litigated cases under the Civil Rights of Institutionalized Persons Act.

In 1998, Ms. Chen became an Assistant United States Attorney in the Criminal Division in the Eastern District of New York. There, she became a member of the Violent Criminal Enterprises Section where she prosecuted gang cases drug trafficking, gun crimes, and violence. In 2003, she was promoted to Chief of the Office's Civil Rights Litigation Unit. There, she supervised and worked on cases involving education, housing, disability, employment and voting rights. She also handled criminal cases involving hate crimes, color of law, and human trafficking cases. She currently acts as Chief in the criminal Civil Rights Section.

Upon graduating from the University of California Hastings College of Law in 1990, Judge Nunley served as a law clerk for the Alameda County District Attorney's office and was hired as a Deputy District Attorney in 1991. As a prosecutor, he handled routine superior court matters such



as arraignments, bail hearing, preliminary examinations, settlement conferences and probation revocation hearings.

From 1994 to 1996, Judge Nunley opened his own law practice, the Law Office of Troy L. Nunley. He worked as a general practitioner primarily representing criminal defendants, though he also handled workers' compensation, personal injury, federal civil rights and juvenile delinquency matters. In 1996, he joined the Sacramento County District Attorney's Office as a Deputy District Attorney. In this position, he mainly handled felony jury trials in superior court. He was also assigned to the Domestic Violence Unit where he specialized in prosecuting stalking cases. Later, he was assigned to the Major Crimes Unit gangs section prosecuting gang members.

In 1999, he joined the California Attorney General's Office as a Deputy Attorney General where he served until being appointed a Superior Court Judge in 2002. In the Attorney General's Office, he was assigned to the Appeals, Writs and Trials section, where his practice involved

preparing responses to appeals filed by felony criminal defendants with the state and appellate courts.

Judge Nunley also teaches as a law professor at Lincoln Law School of Sacramento. He has taught upper-division Corporations and Business Partnerships since August 2006.

In July of 2002, Governor Grey Davis appointed Judge Nunley to be a California Superior Court judge for the County of Sacramento. He was reelected to this position on June 8, 2010. As court of general jurisdiction, Judge Nunley presides over both criminal and civil matters.

Judge Chappell received her B.A. from the University of Wisconsin-Madison in 1984 and her J.D. from Nova Southeastern University Law School in 1987. Upon graduation, Judge Chappell became an Assistant State Attorney in the Fort Myers Misdemeanor Division. In 1988, she began prosecuting felony cases including crimes against children, drugs, property crimes, and crimes against persons. In 1991, she was promoted to Office Head of the Hendry and Glades County Office where she prosecuted cases and supervised the attorneys, secretaries, and

investigators. From 1993 until 1998, she acted as the Supervisor of the Fort Myers Circuit Court Trial Division where she served as chair of the hiring committee and created a training course for new assistant state attorneys. From 1998 to 2000, Judge Chappell served as the Office Head of the Charlotte County Office.

In 2000, Judge Chappell was appointed by then-Governor Jeb Bush as a Lee county Court Judge for the Twentieth Judicial Circuit. In 2002, she was elected to serve a six-year term for this position. There, she had jurisdiction over misdemeanor cases and civil disputes involving \$15,000 or less. She resigned in 2003 due to her selection as a United States Magistrate Judge for the Middle District of Florida, her current position. There she handles criminal and civil dockets.

Upon graduating from the University of Michigan Law School in 1988, Mr. Barnett joined Steptoe & Johnson as an Associate. He began in the general litigation section conducting legal research and document reviews related to government contracts and false claims issues. After 18

months, he transitioned into the international group where he focused on unfair trade cases providing advice to foreign companies involved in antidumping and countervailing duty cases before the United States International Trade Commission and the Department of Commerce.

In 1995, he joined the Office of Chief Counsel for Import Administration at the Department of Commerce where he provided legal advice to Import Administration officials in antidumping and countervailing duty investigations and legal support in negotiating suspension agreements with parties to these cases.

In 1999, he was elevated to Senior Counsel making him responsible for providing supervisory advice to staff attorneys working with the Import Administration in the conduct of antidumping and countervailing duty cases. In addition, he participated in defending determinations in settlement dispute proceedings at the World Trade Organization (WTO). He provided senior level guidance on significant issues in domestic litigation and in litigation before bi-national panels established under North American

Free Trade Agreement (NAFTA). He also participated in the Doha Round of WTO negotiations and provided legal and negotiation advice to senior officials of the International Trade Administration.

Since 2005, Mr. Barnett has served as the Deputy Chief Counsel for Import Administration. In this role, he supervises all aspects of the legal services provided by the offices approximately 30 attorneys, as well as overseeing the office budget, administration, and hiring. He also continues to conduct and supervise litigation before WTO dispute Settlement panels and its Appellate body in coordination with senior officials at the Office of the United States Trade Representative and International Trade Commission. During 2008-2009, Mr. Barnett was on detail from the Department of Commerce with the Subcommittee on Trade, United States House of Representatives Committee on Ways and Means.

**Senator Chuck Grassley  
Questions for the Record**

**Katherine Polk Failla  
Nominee, U.S. District Judge for the Southern District of New York**

1. During your confirmation hearing, you stated that judicial decisions “should be decided based on law and not based on any personal feelings for any of the litigants,” but allowed that “certainly people’s factors and characteristics may come into play.” Please clarify how a judge ought to allow a litigant’s characteristics to come into play without making a decision based on personal feelings.
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?
9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

11. You have spent your entire legal career as an advocate for your clients, mostly representing the United States of America. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
12. Please describe with particularity the process by which these questions were answered.
13. Do these answers reflect your true and personal views?

**Senator Chuck Grassley  
Questions for the Record**

**Pamela Ki Mai Chen  
Nominee, U.S. District Judge for the Eastern District of New York**

1. You were a member of the Criminal Justice Act Felony I Appointment Committee which issued a report proposing criteria for appointment of attorneys to handle Felony I cases. I am interested in how this experience may influence you, if confirmed as a judge. Specifically,
  - a. Please explain the problem that the Committee was trying to solve with their proposals.
  - b. What was your role in writing the recommendations?
  - c. In your view, why was the defense bar unable to regulate this by themselves?
  - d. As a judge, would you be influenced by recommendations put forth by such a committee?
  - e. Do you find such proposals to be necessary or rather an interference with judicial discretion?
  
2. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches related to hate crimes. Could you provide the committee with a more detailed description of the points covered than is provided in your original questionnaire for the following talks?
  - a. April 26, 2012 Keynote Speaker, Third Annual Friendship Dinner hosted by the Turkish Cultural Center.
  - b. June 6, 2011, Panelist, Civil Rights Table
  - c. July 15, 2010, Speaker, El Centro del Immigrante and Project Hospitality
  - d. February 21, 2009, Panelist, "Evolving Understandings of Hate Crimes Against Asian and Middle-Eastern Americans in Pre- and Post-9/11 America: Economic Motivations and the Myth of the 'Perpetual Foreigner,'"



3. In 2003, you were involved in the prosecution of Angel D'Angelo. In *United States v. D'Angelo* in 2004 the district court suggested that "the government knew or should have known" that the government's cooperating witnesses had perjured themselves at trial. While I recognize that the Office of Professional Responsibility later determined that there was no wrongdoing on your part, please explain your role in this case and the events surrounding the incident the district court references.
4. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?
  - a. Under what circumstances would you be willing to depart from the Guidelines?
  - b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?
5. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain how you would apply this, if confirmed.
6. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you reach a decision in cases that come before you and to what sources of information will you look for guidance. What do expect to be most difficult part of this transition for you?
7. What is the most important attribute of a judge, and do you possess it?
8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
9. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
11. Do you believe that the death penalty is an acceptable form of punishment?

12. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?
15. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
17. You have spent your entire legal career as an advocate for your clients, primarily representing the United States of America. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
18. Please describe with particularity the process by which these questions were answered.
19. Do these answers reflect your true and personal views?

**Senator Chuck Grassley  
Questions for the Record**

**Troy L. Nunley  
Nominee, U.S. District Judge for the Eastern District of California**

1. As part of a judicial profile that appeared in the Sacramento Bee in 2006, you are reported as saying, "My experience helps me to have a certain perspective...A Young African American male who took a certain route, I can see what happened to them."
  - a. In what way, if any, do your personal experiences inform you in the courtroom?
  - b. Do your personal experiences enter into your decision making processes when making a ruling or sentencing determination?
  
2. In 2011 interview with Harry Henry you expressed a preference for rehabilitation programs over incarceration, stating that America has "turned into a society that is punitive, that incarcerates people" and does not do an "effective job rehabilitating and reintegrating people back into society." You also expressed some dissatisfaction with California's three strikes law and mandatory sentences saying that, "unfortunately, sometimes the law is such that I have no discretion in terms of what I can sentence a person too." You went on to discuss sentences you have given to young adults, including sentences under California's three strikes law. You mentioned that when a young adult has a "compelling reason or has a great prospect for the future" you will take a chance on them in limited circumstances.
  - a. Do you oppose mandatory sentences? If so, why?
  - b. In the interview, you also mentioned that there are instances in which you do have discretion. You continued onto say that in limited circumstances you will take a chance on someone if there is a "compelling reason." Could you provide an example of a case where a compelling reason existed and how you adjusted that person's sentence?
  - c. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?
  - d. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?
  - e. Do you believe a judge should take into consideration a person's ability to contribute to society in sentencing an individual?

3. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?
4. Do you believe empathy should play a role in arriving at just decisions and should play a role in a judge's consideration of a case?
5. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?
6. What is the most important attribute of a judge, and do you possess it?
7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?
13. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

**Senator Chuck Grassley  
Questions for the Record**

**Sheri Polster Chappell  
Nominee, U.S. District Judge for the Middle District of Florida**

1. You have given many lectures to judges on how to use technology to their benefit. A common phrase you've used is "Judges have a tremendous unwillingness to admit what they don't know". While I asked about this at your hearing, I wanted to give you an opportunity to give a more complete response.
  - a. Can you please explain in what areas you have seen this philosophy apply to a judges' work, other than technology?
  - b. Have you experienced this unwillingness yourself as a judge? If so, how do you approach this issue?
  - c. Has an unwillingness to admit what you don't know ever affected your ability to judge fairly and impartially?
2. During your hearing I referenced a speech you gave at Canterbury School in Fort Meyers Florida entitled "Open Doors to the Federal Courts". In one of your slides you indicated that one of the goals of a 'fair court' is diversity on the bench. I have a few follow up questions.
  - a. Your answer did not make it clear to me why diversity is necessary for a fair court. Will you please elaborate on the connection between diversity across the court and fairness in a particular courtroom?
  - b. Do you believe that a court is not perceived as fair, neutral, and just in resolving legal matters if the makeup of its bench is not diverse as you would define it?
  - c. How does the presence of different races, genders, or social backgrounds on a court increase the likelihood that the court will be fair?
3. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?
  - a. Under what circumstances would you be willing to depart from the Guidelines?

- b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?
4. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain how you would apply this, if confirmed.
5. What is the most important attribute of a judge, and do you possess it?
6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?
12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload? What is your current practice?
13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket? What is your current practice?

14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
15. Please describe with particularity the process by which these questions were answered.
16. Do these answers reflect your true and personal views?



**Senator Chuck Grassley  
Questions for the Record**

**Mark A. Barnett  
Nominee, Judge of the United States Court of International Trade**

1. Please describe factors you will take into account as you consider the appropriate level of deference the Court of International Trade (CIT) should give to the U.S. International Trade Commission (ITC) on questions of statutory interpretation, particularly in appeals of determinations in antidumping and countervailing duty cases.
2. Please describe your view on the appropriate level of deference the CIT should give to the ITC on questions of fact when presented with "Substantial Evidence" questions and challenges. What will be your approach to such challenges, and what factors would you consider in such cases?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

9. Do you agree with the Federal Circuit's decision in *SFK USA, Inc. v. U.S. Customs and Border Protection*, 556 F.3d 1337 (2009) regarding the constitutionality of the Byrd Amendment to the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000? What will be your approach in cases regulating commercial speech?
10. Please describe your understanding of the workload of the Court of International Trade. If confirmed, how do you intend to manage your caseload?
11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
12. Please describe with particularity the process by which these questions were answered.
13. Do these answers reflect your true and personal views?

**Questions for the Record**

Hearing: Nominations

September 19, 2012

Submitted by Senator Amy Klobuchar

**Questions for all nominees:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Response of Katherine Polk Failla**  
**Nominee to be United States District Judge for the Southern District of New York**  
**to the Written Questions of Senator Chuck Grassley**

- 1. During your confirmation hearing, you stated that judicial decisions “should be decided based on law and not based on any personal feelings for any of the litigants,” but allowed that “certainly people’s factors and characteristics may come into play.” Please clarify how a judge ought to allow a litigant’s characteristics to come into play without making a decision based on personal feelings.**

Response: In almost all cases, a judge must decide disputed issues without reference to a particular litigant’s characteristics. However, there are a few statutes that require a judge to consider such factors in limited circumstances – such as 18 U.S.C. § 3553(a), which instructs a judge to consider, among other sentencing factors, “the nature and circumstances of the offense and the history and characteristics of the [criminal] defendant.” Put simply, a judge must do what the law requires, and a judge may only consider the characteristics of a particular litigant when the law requires it and for the limited purposes for which the law requires it.

- 2. What is the most important attribute of a judge, and do you possess it?**

Response: I think the most important attribute of a judge is an abiding sense of (and concern for) fairness, and I believe that I possess it.

- 3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that an appropriate judicial temperament comprises respect for all parties, a willingness to listen carefully to the parties’ arguments, a dedication to steeping oneself in the facts of the case and the relevant precedent, and a commitment to deciding disputed issues fairly, transparently, and promptly. I believe I have those qualities.

- 4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes, I am.

- 5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I believe the starting point for deciding cases of first impression is the text of the provision at issue. If it is unambiguous, my inquiry would end. If it is ambiguous, I would look to the structure and context of the provision, any relevant canons of statutory construction, and any guidance from analogous precedent of the Supreme Court, the Second Circuit Court of Appeals, other Circuit Courts of Appeals, and/or other district courts (in that order). If appropriate, I would also consider the legislative history of the provision.

- 6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I were fortunate enough to be confirmed, I would faithfully apply any relevant precedent from the Supreme Court or the Second Circuit, regardless of my personal views on that precedent.

- 7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: I believe that it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional only where it violates a provision clearly set out in the Constitution or where Congress has exceeded its constitutional authority. In considering a constitutional challenge to a statute, a district judge must apply any applicable precedent of the Supreme Court and the relevant Circuit Court of Appeals. In addition, the district judge must be mindful of the relevant canons of construction, such as the presumption of constitutionality and the doctrine of constitutional avoidance.

- 8. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: I do not believe it is ever proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution.

- 9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If I were confirmed as a district judge, I would make clear to litigants early on my expectations concerning the progress of a particular case, by setting realistic deadlines that would move only in limited circumstances. More fundamentally, I would review my docket on a regular basis to ensure that cases did not “fall through the cracks”; I would make effective use of both Magistrate Judges and the District’s mediation program; and I would work hard to ensure that disputed issues presented to me were resolved promptly.

**10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that judges have both a role and a responsibility to control the pace of litigation, in order to ensure that justice is fairly and timely administered to all litigants. If I were confirmed as a district judge, I would take the specific steps outlined in my response to Question 9 to control my docket.

**11. You have spent your entire legal career as an advocate for your clients, mostly representing the United States of America. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: In resolving disputed legal issues, I would consider the relevant Constitutional or statutory provisions, and any precedent from the Supreme Court and the Second Circuit. To the extent that I needed to resolve factual issues, I would ensure that I had a thorough understanding of the record. I would also strive to listen carefully and with an open mind to the arguments of the parties. I think the most difficult part of the transition would be familiarizing myself with certain substantive areas of civil law with which I have little or no experience.

**12. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on Wednesday, September 26, 2012. Over the course of the next few days, I drafted responses to the questions. I then discussed my responses with a representative of the Department of Justice and authorized the Department of Justice to transmit them to the Committee.

**13. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Katherine Polk Failla  
Nominee to be United States District Judge for the Southern District of New York  
to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy involves administering justice to litigants fairly, respectfully, promptly, and transparently. In this philosophy, the judge has an important, albeit limited, role of deciding the particular case or controversy before the judge by applying the precedent of the relevant Circuit Court of Appeals and the Supreme Court to the specific facts of the case.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: It is critical to the continued success of our system of justice that people are – and believe from the outset that they will be – treated equally by judges regardless of their background or personal circumstances. I believe that the professional reputation I have developed in working on both civil and criminal litigation matters, including my many years of public service as a prosecutor, can and will assure litigants that they will be treated equally.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Stare decisis is another critical component of our system of justice that ensures a consistency in judicial decisions – which, in turn, gives litigants comfort that decisions will be based on the facts and the law, and not the personal opinions of the particular judge. I do not believe that the commitment to stare decisis should vary depending on the court, but I recognize that stare decisis is particularly important for district judges, since they more frequently decide disputed legal issues by following the precedent of the relevant Circuit Court of Appeals and the Supreme Court.

**Response of Pamela Ki Mai Chen**  
**Nominee to be United States District Judge for the Eastern District of New York**  
**to the Written Questions of Senator Chuck Grassley**

- 1. You were a member of the Criminal Justice Act Felony I Appointment Committee which issued a report proposing criteria for appointment of attorneys to handle Felony I cases. I am interested in how this experience may influence you, if confirmed as a judge. Specifically,**

- a. Please explain the problem that the Committee was trying to solve with their proposals.**

Response: To the best of my recollection, the Committee was formed by the District of Columbia Superior Court to identify professional criteria that could be used to determine the eligibility of attorneys appointed by the District of Columbia Superior Court to represent defendants in cases involving the most serious offenses under District of Columbia penal law.

- b. What was your role in writing the recommendations?**

Response: I was one of five attorneys selected by the District of Columbia Superior Court to participate in the Committee. As a committee member, I discussed and eventually agreed with the other committee members on a set of professional criteria for court-appointed defense counsel in Felony I cases. These recommendations were set forth in a report to the District of Columbia Superior Court in 1995.

- c. In your view, why was the defense bar unable to regulate this by themselves?**

Response: I have no personal view on this issue, nor was I or the Committee asked to formulate or express a view on this issue. Notably, four of the five members on the Committee were practicing members of the defense bar.

- d. As a judge, would you be influenced by recommendations put forth by such a committee?**

Response: Pursuant to the Criminal Justice Act plan in the Eastern District of New York, the court where I would sit if confirmed, there is a selection panel that decides on the admission of court-appointed attorneys. Only one district judge participates in the selection panel. Therefore, it is unlikely that I would participate in the selection of Criminal Justice Act attorneys or have any occasion to consider recommendations from an outside committee regarding eligibility requirements. However, if I were a



member of the Criminal Justice Act selection panel in my district and if the panel chose to solicit recommendations from a committee similar to the one in which I participated in 1995, I would consider those recommendations, but I cannot say in the abstract whether I would be influenced by them. Furthermore, the selection panel would not be bound by such committee recommendations.

**e. Do you find such proposals to be necessary or rather an Interference with judicial discretion?**

Response: I do not believe that such proposals or recommendations are necessary. At the same time, I do not believe that they interfere with judicial discretion because the court is not bound by them.

**2. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches related to hate crimes. Could you provide the committee with a more detailed description of the points covered than is provided in your original questionnaire for the following talks?**

**a. April 26, 2012 Keynote Speaker, Third Annual Friendship Dinner hosted by the Turkish Cultural Center.**

Response: The speech was given at the Turkish Cultural Center in Staten Island, New York. In the speech, I described a hate crime that had occurred in Staten Island in November 1998, and the prosecution of the perpetrators of that crime by my office, the United States Attorney's Office for the Eastern District of New York. (The prosecution, *United States v. Nicoletti*, is discussed in my Senate Judiciary Questionnaire (Q.17(4).) The case involved a series of racially motivated assaults on three men, two of whom were African American and one of whom was white, but mistaken by the attackers as being African American. The most seriously injured victim was in a coma for several weeks and suffered brain damage. I explained that all four perpetrators pled guilty to participating in a federal hate crime conspiracy and that they received sentences ranging from 55 to 108 months' incarceration. I also acknowledged the tremendous assistance and cooperation provided by the Richmond County District Attorney's Office and the New York City Police Department, which had investigated the case with the Federal Bureau of Investigation.

**b. June 6, 2011, Panelist, Civil Rights Table**

Response: I participated in this panel as a representative of the United States Attorney's Office for the Eastern District of New York to discuss hate crimes

investigation and prosecution. Although I provided notes of my remarks with my Senate questionnaire, the notes are admittedly brief and unclear. During this event, I discussed: (1) how federal authorities address allegations of hate crimes, which included an explanation of the federal hate crimes statutes and examples of potential hate crimes; (2) avenues for proving actual, as opposed to perceived, hate crimes, including finding concrete evidence to prove an alleged perpetrator's motivation and intent; (3) the types of information needed to investigate and prosecute a federal hate crime; and (4) law enforcement and community resources for potential victims of hate crimes.

**c. July 15, 2010, Speaker, El Centro del Immigrante and Project Hospitality**

Response: I participated in this community event on behalf of the United States Attorney's Office for the Eastern District of New York, along with a representative of the Richmond County District Attorney's Office, at the request of the Department of Justice's Community Relations Service ("CRS"). The event was organized and hosted by CRS and community organizations in Staten Island, New York in response to a series of assaults and robberies that had been committed against Latinos in Staten Island. My brief remarks during the event consisted of describing the federal hate crimes statutes and explaining the deference given by federal authorities to State and local authorities to investigate and prosecute hate crimes in the first instance. I also answered some questions from the audience that, to the best of my recollection, related to practical issues, such as to whom potential hate crimes should be reported.

**d. February 21, 2009, Panelist, "Evolving Understandings of Hate Crimes Against Asian and Middle-Eastern Americans in Pre- and Post-9/11 America: Economic Motivations and the Myth of the 'Perpetual Foreigner'"**

Response: To the best of my recollection, I discussed the fact that following the events of September 11, 2001, there was an increase in allegations of anti-Muslim hate crimes, some of which were committed against Sikhs, who were mistakenly believed to be Muslims. I also explained that the majority of hate crimes in the New York City area are prosecuted by State and local authorities because (1) the federal hate crimes statutes are limited in scope and application; and (2) in most cases, there will be many more State or local crimes that can be charged than under federal law with respect to the hate crime incident.

**3. In 2003, you were involved in the prosecution of Angel D'Angelo. In *United States v. D'Angelo* in 2004 the district court suggested that "the government knew or should have known" that the government's cooperating witnesses had perjured themselves at**

**trial. While I recognize that the Office of Professional Responsibility later determined that there was no wrongdoing on your part, please explain your role in this case and the events surrounding the incident the district court references.**

Response: *United States v. D'Angelo* was a murder prosecution in which the defendant, Angel D'Angelo, was convicted of a gang-related murder at trial. I was the lead prosecutor on the government's two-person trial team. The district court overturned the jury's verdict and granted the defendant a new trial, based, in part, on the district court's finding that the government's cooperating witnesses had testified falsely at trial regarding specific events. Following the district court's granting of a new trial, D'Angelo pled guilty to lying to federal agents regarding his whereabouts on the night of murder, and was sentenced to time served.

In its written decision, the district court was most troubled by specific testimony by one of the government's cooperating witnesses, Albert Alvarado. At trial, Alvarado, in response to cross-examination by defense counsel, denied telling a detective during an interview shortly after the murder (the "July 12 interview") that someone other than D'Angelo had committed the murder. On re-direct, my co-counsel sought to have Alvarado further explain his recollection of the July 12 interview. The re-direct, however, only created confusion and caused the district court to believe that Alvarado had testified falsely on re-direct examination and that the government had at least negligently elicited that testimony.

Although I did not present Alvarado's testimony at trial, I assisted in preparing Alvarado for trial and responding to the court post-trial regarding Alvarado's testimony. While I respect the district court's decision, I respectfully disagree with some of its conclusions. In particular, neither I nor my co-counsel knowingly or negligently presented perjured testimony by Alvarado. Prior to trial, we had questioned Alvarado extensively about the discrepancy between his and the detective's account of the July 12 interview. We ultimately credited Alvarado's explanation that he did not identify someone other than D'Angelo as the murderer during the interview, but that he may have said something ambiguous that led the detective to believe that Alvarado was identifying someone else -- which is the information my co-counsel sought, unsuccessfully, to elicit during Alvarado's re-direct examination. Prior to trial, we disclosed the discrepancy between Alvarado's and the detective's accounts of the July 12 interview, and produced the detective's report of the interview. At trial, we made the detective available for the defense to call as a witness, although the defense declined to do so. With regard to Alvarado's testimony at trial, we believed that his re-direct answers created confusion because he was referring to other police interviews in which he had identified D'Angelo as the murderer, and not the July 12 interview. We therefore did not believe at the time of trial, or any time, that Alvarado had knowingly perjured himself on this issue.

- 4. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: If confirmed, I would give significant deference to the Sentencing Guidelines. The Sentencing Guidelines reflect the integration of many of the sentencing factors that a judge must consider under 18 U.S.C. § 3553(a), as well as the collective experiences of the Sentencing Commission and judges across the country. Deference to the Sentencing Guidelines ensures uniformity, consistency, predictability and fairness in the federal criminal justice system.

- a. Under what circumstances would you be willing to depart from the Guidelines?**

Response: If confirmed, I would only depart from the Sentencing Guidelines in cases where there exist unusual and compelling aggravating or mitigating facts or circumstances that are not accounted for in the Sentencing Guidelines.

- b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: Please see my response to Question 4.a.

- 5. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain how you would apply this, if confirmed.**

Response: I strongly agree that the sentence a defendant receives should not depend on the judge he or she draws. If confirmed as a district court judge, I would apply this tenet by giving strong deference to the Sentencing Guidelines in all cases, unless there exist unusual and compelling aggravating or mitigating facts or circumstances that are not accounted for in the Sentencing Guidelines.

- 6. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you reach a decision in cases that come before you and to what sources of information will you look for guidance. What do expect to be most difficult part of this transition for you?**

Response: If confirmed as a district court judge, I would decide cases based solely on the application of the relevant law to all of the facts before me that are sufficiently established under the applicable standard of proof. With regard to the law, I would look to all relevant legal authority, including the Constitution, statutes and controlling precedent for guidance.

With regard to the facts, I would rely on all admissible evidence that is presented to the court to make the appropriate factual findings. I anticipate that the most difficult part of transitioning from advocate to judge would be the breadth of subject matters with which a judge must become knowledgeable.

**7. What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attributes of a judge are an unwavering faithfulness to the rule of law, integrity, fairness, objectivity, open-mindedness, independence, decisiveness, even temperament and a commitment to showing respect for all parties. I believe I possess these attributes.

**8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that the most important elements of judicial temperament are treating all parties and individuals appearing before the court with dignity, respect and patience, and seeking to ensure that all parties feel that they have been given a full and fair opportunity to be heard. It is also important for a judge to be firm and decisive and to ensure that order and civility are observed in the courtroom. Lastly, it is critical that a judge rule timely and with transparency. I believe that, if confirmed, I would meet these standards.

**9. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed as a district court judge, I would be bound by and would apply Supreme Court and Second Circuit precedent, regardless of any personal views about the correctness of these decisions.

**10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed and faced with a case of first impression, I would first look at the language of the statute at issue. If the statute is ambiguous and there is no controlling

precedent regarding its interpretation, I would look for Supreme Court and Second Circuit precedent regarding an analogous provision or similar issue, as well as directly relevant but non-controlling precedent in another Circuit.

**11. Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes, the Supreme Court has held that the death penalty is an acceptable form of punishment and has upheld the constitutionality of the death penalty.

**12. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district court judge, I would follow all controlling precedent of the United States Supreme Court and Second Circuit Court of Appeals, regardless of any personal views regarding the correctness of any decision.

**13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute is presumed to be constitutional. Therefore, it is only appropriate for a court to find a statute unconstitutional “upon a plain showing that Congress has exceeded its constitutional bounds,” *United States v. Morrison*, 529 U.S. 598, 607 (2000), or where a statute violates a provision of the Constitution. In making these determinations, the court should look to Supreme Court and Circuit Court precedent.

**14. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No.

**15. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would manage my caseload by setting and enforcing firm deadlines for motions and discovery, rule promptly and decisively, and use electronic docket management tools to monitor the progress of cases. With respect to civil cases, I would also work with the magistrates and parties to facilitate and encourage prompt settlement whenever possible and appropriate.

**16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that district court judges, working with magistrate judges, not only have a role, but an obligation, to ensure that litigation is conducted fairly and expeditiously. If confirmed, I would seek to control my docket by setting and enforcing clear deadlines, ruling promptly and decisively, guarding against wasteful or intentionally vexatious litigation, and encouraging, where appropriate, prompt settlement of cases.

**17. You have spent your entire legal career as an advocate for your clients, primarily representing the United States of America. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed as a district court judge, I would decide cases based solely on the application of the relevant law to the facts that are sufficiently established under the applicable standard of proof. With regard to the law, I would look to all relevant legal authority, including the Constitution, statutes and controlling precedent for guidance. With regard to the facts, I would rely on all admissible evidence that is presented to the court to make the appropriate factual findings. I anticipate that the most difficult part of transitioning from advocate to judge would be the breadth of subject matters with which a judge must become knowledgeable.

**18. Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on Wednesday, September 26, 2012. I completed a draft of my responses on Monday, October 1, 2012. I thereafter discussed my responses with an official from the Department of Justice, after which I finalized them. I later forwarded my responses to the Department of Justice for submission to the Senate Judiciary Committee.

**19. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Pamela Ki Mai Chen**  
**Nominee to be United States District Judge for the Eastern District of New York**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: In our constitutional system of government, the role of the judiciary is important but limited. Judges are responsible for ensuring the fair, impartial and consistent application of the law. Consistent with that role, my judicial philosophy is based on strict adherence to the rule of law and *stare decisis*, which means deciding cases based solely on the application of precedent, as established by the Supreme Court and Courts of Appeal, to the facts before the court.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: All parties, whether they are defendants or plaintiffs, are entitled to fair, equal and respectful treatment before the court regardless of their political views or affiliations, or economic or social status. My record as a career prosecutor and government litigator demonstrates my commitment to exercising discretion and authority with fairness and impartiality. If confirmed, I would continue to maintain this standard of ensuring fair, equal and respectful treatment of all who appear before me.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: All judges and courts are bound by, and must adhere to, the doctrine of *stare decisis*, which is the bedrock of our legal system and is vital to ensuring consistency, predictability, uniformity, impartiality and fairness.



**Response of Troy L. Nunley**  
**Nominee to be United States District Judge for the Eastern District of California**  
**to the Written Questions of Senator Chuck Grassley**

1. As part of a judicial profile that appeared in the Sacramento Bee in 2006, you are reported as saying, “My experience helps me to have a certain perspective...A Young African American male who took a certain route, I can see what happened to them.”

- a. In what way, if any, do your personal experiences inform you in the courtroom?

Response: My personal experiences do help me listen to and understand litigants and witnesses from different backgrounds. However, my adjudication of cases is based solely on the evidence before me and the governing law without regard to my personal experiences.

- b. Do your personal experiences enter into your decision making processes when making a ruling or sentencing determination?

Response: No. I have been a state superior court judge for over 11 years. My personal experiences have never entered into my decision making processes when making a ruling or sentencing determination.

2. In 2011 interview with Harry Henry you expressed a preference for rehabilitation programs over incarceration, stating that America has “turned into a society that is punitive, that incarcerates people” and does not do an “effective job rehabilitating and reintegrating people back into society.” You also expressed some dissatisfaction with California’s three strikes law and mandatory sentences saying that, “unfortunately, sometimes the law is such that I have no discretion in terms of what I can sentence a person too.” You went on to discuss sentences you have given to young adults, including sentences under California’s three strikes law. You mentioned that when a young adult has a “compelling reason or has a great prospect for the future” you will take a chance on them in limited circumstances.

- a. Do you oppose mandatory sentences? If so, why?

Response: No, I do not oppose mandatory sentences, and I have imposed such sentences over the past eleven years while serving as a state court judge.

- b. In the interview, you also mentioned that there are instances in which you do have discretion. You continued onto say that in limited circumstances you will take a chance on someone if there is a “compelling reason.” Could you provide an example of a case where a compelling reason existed and how you adjusted that person’s sentence?

Response: A minor came before me in juvenile court on several occasions after committing a series of burglaries and possessing drugs. His father’s whereabouts

were unknown and his mother was a drug addict. His two sisters were attending college and wanted me to allow the minor to live with them. However, I sent him to the juvenile detention facility pursuant to prevailing juvenile sentencing laws. Upon release he continued to commit petty crimes. I ultimately decided to send him out of state to a foster home placement in Pennsylvania. I told him if he attended school, stayed out of trouble and remained in placement in Pennsylvania then I would consider allowing him to return to live with his two sisters in California. While in placement in Pennsylvania, the minor stayed out of trouble and became an honor student. I adjusted the minor's sentence and allowed him to return to California where he enrolled in college while living with his sisters. During monthly progress reports the young man continued to progress while remaining in school and working a part-time job.

- c. **Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: In the aftermath of *United States v. Booker* the Federal Sentencing Guidelines are now advisory rather than mandatory. If I am confirmed, I intend to give the Federal Sentencing Guidelines significant deference. The Federal Sentencing Guidelines create uniformity, consistency and fairness while assuring that similarly situated cases are treated the same.

- d. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: It is appropriate for a federal district court judge to depart downward from the Federal Sentencing Guidelines if a case presents unusual attributes. In such cases if a court departs from the guidelines and sentences outside the prescribed range, the court must specify reasons for the departure. Examples include cases where a defendant provides substantial assistance to authorities or if the victim's wrongful conduct contributes significantly to provoking the offense behavior.

- e. **Do you believe a judge should take into consideration a person's ability to contribute to society in sentencing an individual?**

Response: No. I don't believe a judge should take into consideration a person's ability to contribute to society in sentencing an individual. An individual's sentence should depend upon the applicable statutes, Federal Sentencing Guidelines, precedent and the facts of the case.

3. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: The sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw. A defendant's sentence should never depend upon

forum shopping for the most favorable disposition. The sentence should depend upon the applicable statutes, Federal Sentencing Guidelines, precedent and facts of the case.

- 4. Do you believe empathy should play a role in arriving at just decisions and should play a role in a judge's consideration of a case?**

Response: A judge must have a faithful and consistent interpretation of the law while adhering to precedent without regard to sympathy for the parties or a particular outcome. A judge must also listen to and comprehend all of the litigants who appear in court.

- 5. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

Response: The United States Supreme Court has upheld the constitutionality of the death penalty except for a few special circumstances such as cases involving juveniles and the mentally retarded. If I am confirmed as a federal district court judge, I will follow United States Supreme Court precedent as well as Ninth Circuit precedent.

- 6. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is fairness to all litigants without regard to their status. Fairness gives litigants the confidence that regardless of the outcome of a particular case, a judge will allow them their day in court without regard to the judge's personal beliefs. Throughout the years I have given all litigants who appear before me an opportunity to be heard. I have rendered decisions fairly and I have a healthy respect for judicial precedent.

- 7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The most important elements of judicial temperament are decisiveness, open-mindedness, patience, respect and courtesy. I believe I meet this standard, and over the years I have gained a reputation in the legal community of meeting said standards.

- 8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: A judge's personal beliefs should never enter into the decision-making process. If confirmed I would be fully committed to following United States Supreme Court precedent and Ninth Circuit precedent without regard to my personal beliefs.

- 9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: When confronted with a case of first impression involving a statute or regulation, I would initially review the plain language of the statute or regulation and apply the canons of statutory construction. If the meaning remained ambiguous, I would then look at both United States Supreme Court precedent and Ninth Circuit precedent in analogous cases. If I needed further guidance I would look to legislative history, if available and if it were appropriate. Lastly I would examine analogous precedent from Circuit and District Courts outside my jurisdiction.

- 10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision of the United States Supreme Court or the Ninth Circuit Court of Appeals faithfully and impartially.

- 11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court may only declare a statute unconstitutional when Congress exceeds its constitutional authority or when the statute violates an express provision of the United States Constitution.

- 12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No.

- 13. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a state court judge for the past 11 years, I am familiar with heavy caseloads and I have experience dealing with such caseloads. I am also aware the Eastern District Court here in California has the heaviest caseload in the nation. If confirmed, I would manage my caseload as follows: thoroughly review all pending cases in order to identify and manage complex cases that require immediate attention; conduct frequent status conferences to keep abreast of case progress; impose discovery limitations consistent with the Federal Rules of Civil Procedure; strongly encourage the litigants to highlight the issues in dispute; set and enforce reasonable deadlines; discourage unnecessary extensions of time; and rule on motions and issues promptly.

- 14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe judges do have a role in controlling the pace and conduct of litigation. If confirmed I would control my docket as set forth in question No. 13. I would require the attorneys to abide by the court's deadlines so cases can move along and not languish.

- 15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: In deciding the legal issues in cases that come before me, I first talk to the parties to clarify the issues and determine how the law applies to the relevant facts. I subsequently examine the relevant governing law before looking at precedent established by the California Supreme Court or the state appellate court.

- 16. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions from a representative of the Department of Justice on September 26, 2012. I wrote my answers on September 27 and September 28, 2012. I submitted them to the Department of Justice on September 28, 2012 and on October 2, 2012, I worked with them to finalize the responses.

- 17. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Troy L. Nunley**  
**Nominee to be United States District Judge for the Eastern District of California**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is that judges should be fair and impartial to all litigants who appear before them regardless of their backgrounds. Additionally, judges must possess integrity and be courteous and respectful to the litigants, staff and the public who enter our courtrooms on a daily basis. As a state court judge for the past 11 years, I have conducted myself in such a manner while actively listening to the litigants and while being transparent in my rulings.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I have sat on the state court bench for the past 11 years. During that time I have earned a reputation as being fair, even-tempered, courteous and respectful. I treat each litigant the same, regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff. If I am confirmed as a federal judge, I will continue to treat litigants in the same manner.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: All judges, at every level, should strictly bind themselves to the doctrine of stare decisis. As a state court judge, I am bound to follow California Supreme Court precedent and the precedent of the Third Appellate District here in Sacramento, California, as well as United States Supreme Court precedent on matters of federal law.

**Response of Sheri Polster Chappell  
Nominee to be United States District Judge for the Middle District of Florida  
to the Written Questions of Senator Chuck Grassley**

- 1. You have given many lectures to judges on how to use technology to their benefit. A common phrase you've used is "Judges have a tremendous unwillingness to admit what they don't know". While I asked about this at your hearing, I wanted to give you an opportunity to give a more complete response.**

- a. Can you please explain in what areas you have seen this philosophy apply to a judges' work, other than technology?**

Response: As you indicate, this quote was taken from a group presentation used in the context of teaching trainers and judges how to use the newest computer tools and technology. It was not intended to apply outside that context, and I do not believe that judges are unwilling to admit what they do not know when they are hearing and deciding cases.

- b. Have you experienced this unwillingness yourself as a judge? If so, how do you approach this issue?**

Response: No, I have not experienced this unwillingness in the use of technology or more broadly. During my 12 years as a judge, I have encountered new, unique, and ever-changing areas of the law and have willingly admitted "what I don't know." I have relied on researching new issues, reviewing legal memoranda from the parties, and asking questions during oral argument. I believe I show humility on the bench and an openness and willingness to be educated in areas that are not within the scope of my current knowledge.

- c. Has an unwillingness to admit what you don't know ever affected your ability to judge fairly and impartially?**

Response: No. As a judge for the past 12 years, I have shown a willingness to educate myself or be educated, and have judged the cases before me based upon the facts presented and binding precedent, and I have rendered a just, fair, and impartial decision.

- 2. During your hearing I referenced a speech you gave at Canterbury School in Fort Meyers Florida entitled "Open Doors to the Federal Courts". In one of your slides you indicated that one of the goals of a 'fair court' is diversity on the bench. I have a few follow up questions.**

- a. **Your answer did not make it clear to me why diversity is necessary for a fair court. Will you please elaborate on the connection between diversity across the court and fairness in a particular courtroom?**

Response: The slide to which you are referring was intended to encourage discussion amongst the students as to whether the factors listed – judicial elections/appointments in the state courts, judicial appointments in the federal courts, diversity on the bench, canons of judicial conduct, judicial independence and the concept of federalism – assist in achieving the goal of a fair and independent judiciary. Diversity can ensure that the bench better reflects the makeup of the public it serves. But, to be clear, I do not believe that diversity is necessary for a particular court to be fair. A judge's background or other personal characteristics should play no role in how he or she decides cases.

- b. **Do you believe that a court is not perceived as fair, neutral, and just in resolving legal matters if the makeup of its bench is not diverse as you would define it?**

Response: No. Judges who respectfully consider the perspectives and arguments of those that come before them and decide cases based on the law will be perceived as fair and impartial.

- c. **How does the presence of different races, genders, or social backgrounds on a court increase the likelihood that the court will be fair?**

Response: Fairness should not be measured by the presence of different races, genders, or social backgrounds on a court. A judge, irrespective of race, gender, or social background, ensures fairness by listening carefully to the facts presented, applying binding precedent to those facts, and making a well-reasoned decision.

3. **Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: The purpose of the Federal Sentencing Guidelines is to promote uniformity in the sentencing process by avoiding "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). I would give great deference to the Guidelines as they were established by the Sentencing Commission at the direction of Congress regarding the proper punishment. The Guidelines assist the court in assuring that the length of sentence is not dependent upon the presiding



judge, but on the nature and severity of the crime, the defendant's history, and all other relevant factors.

**a. Under what circumstances would you be willing to depart from the Guidelines?**

Response: In every case, I would first determine the applicable sentencing guidelines range. I would then consider all relevant information including the Presentence Report, the recommendations of the probation officer, the evidence, the arguments of counsel, and other factors under 18 U.S.C. § 3553(a). If confirmed as a United States District Judge, I would give the Guidelines substantial weight and would impose a sentence outside the Guidelines range only in limited instances – for example, in a case involving aggravating or mitigating circumstances that were not accounted for by the Guidelines themselves.

**b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: Please see my response to 3(a).

**4. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain how you would apply this, if confirmed.**

Response: The sentence a defendant receives for a particular crime should not depend on the judge he or she appears before. As a District Court Judge, I would look to the Federal Sentencing Guidelines to ensure uniformity in the sentencing process.

**5. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute that a judge can have is integrity, which results in the ability to be fair and impartial in applying the law without exhibiting bias, sympathy, or prejudice. I believe that I have exhibited integrity during my 12 years on the bench.

**6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge's temperament must include patience, humility, and the ability to be an attentive listener. A judge must treat all attorneys, parties, or members of the public, with the utmost respect, thereby setting the standard for courtroom decorum for all to emulate. I believe I have demonstrated the appropriate judicial temperament during my 12 years on the bench.

- 7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I remain committed to following the precedent of all higher courts pursuant to my oath as a judge. A judge's personal beliefs or opinions should have no role in the judicial decision-making process.

- 8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression involving a statute or Constitutional provision, I would first look at the express language of the statute or provision to consider its plain and ordinary meaning. If the text is unambiguous, I would apply the plain and ordinary meaning. If ambiguous, I would look to analogous cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals to provide guidance. If warranted, I would further research persuasive appellate and trial court decisions from other jurisdictions.

- 9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: As a prospective United States District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. I would not let my personal beliefs enter into the decision.

- 10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Federal statutes are presumed to be constitutional. However, if an act of Congress exceeds the authority specifically granted by the Constitution, or if the statute, in whole or in part, violates the plain and ordinary meaning of the Constitution, the court has the duty and obligation to find it wholly or partially unconstitutional.

- 11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No, it is not proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution.

- 12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload? What is your current practice?**

Response: If confirmed I would continue to consistently and regularly monitor the cases on my docket. With electronic filing of documents, I would continue to use the tools at my disposal to track pending motions, daily filings, and status reports. I would rule on dispositive issues in a timely manner, and would assure that I was available to attorneys and parties to address issues as they arise. I would refer appropriate matters to the magistrate judges, refer matters to mediation, and actively supervise all cases from the time of filing to disposition.

- 13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket? What is your current practice?**

Response: Federal District Judges play an integral role in controlling both the pace and conduct of litigation. The Federal Rules of Civil Procedure direct that the rules should be “construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. The Sixth Amendment and the Speedy Trial Act dictate a “speedy” trial in criminal cases. I would continue to actively engage the parties early in the proceedings, develop appropriate and timely scheduling orders, remain firm in having parties meet reasonable deadlines, and make myself available to assist them in moving their cases forward. I would timely set cases for trial in civil matters, and would promptly rule on criminal motions.

- 14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: In deciding cases and writing opinions, I review the parties’ memoranda, research binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals, apply that precedent to the facts of the case, and rule accordingly.

- 15. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on the evening of September 26, 2012. I prepared my responses to the questions on September 27 and 28, 2012. I forwarded my responses to representatives with the United States Department of Justice on October 1, 2012. I subsequently finalized my responses and authorized the Department of Justice to submit my responses to the Judiciary Committee of the United States Senate.

- 16. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Mark A. Barnett**  
**Nominee to be a Judge of the United States Court of International Trade**  
**to the Written Questions of Senator Chuck Grassley**

- 1. Please describe factors you will take into account as you consider the appropriate level of deference the Court of International Trade (CIT) should give to the U.S. International Trade Commission (ITC) on questions of statutory interpretation, particularly in appeals of determinations in antidumping and countervailing duty cases.**

Response: If I am confirmed as a Judge of the United States Court of International Trade, on questions of statutory interpretation, I would give deference to the United States International Trade Commission (ITC) consistent with the Supreme Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984). If the statute is unambiguous, I would apply the statute and decide the case in accordance with the unambiguously expressed intent of Congress. If the statute is ambiguous, I would affirm an ITC interpretation of the statute if that interpretation was based on a permissible construction of the statute. In evaluating the permissibility of the interpretation, I would follow applicable precedent from the Supreme Court and the Court of Appeals for the Federal Circuit.

- 2. Please describe your view on the appropriate level of deference the CIT should give to the ITC on questions of fact when presented with "Substantial Evidence" questions and challenges. What will be your approach to such challenges, and what factors would you consider in such cases?**

Response: If confirmed, on questions of fact, I would defer to the ITC when their decision was supported by substantial evidence. In so doing, it would not be my role to reweigh the evidence that was before the ITC, but to apply the standard of review required by statute, as interpreted in precedent of the Supreme Court and the Court of Appeals for the Federal Circuit. In accordance with that precedent, I would examine whether the evidence and reasonable inferences from the record evidence support the agency's findings and I would affirm an agency finding consistent with such evidence, even when the evidence supports the possibility of drawing two inconsistent conclusions.

- 3. What is the most important attribute of a judge, and do you possess it?**

Response: In my view, the most important attribute of a judge is a commitment to the rule of law and the application of that law in a fair and impartial manner. A judge should not place his or her personal beliefs or views above the law. I believe that I possess the commitment to the rule of law that would allow me to be a fair and impartial judge.

- 4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The most important elements of judicial temperament are being fair, diligent, open-minded, and respectful and courteous to the litigants appearing before you. Such elements help to foster respect for the law and the judicial system. I believe that I possess the traits necessary to have the appropriate temperament of a good judge.

- 5. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed, in deciding a case of first impression, I would first examine the text of the statute to determine if the text was clear. If the text of the statute was unclear or ambiguous, in an appeal of an agency interpretation of the statute, I would determine whether the agency interpretation was permissible, consistent with the standards articulated in *Chevron* and other precedent, as appropriate. In other cases not involving an appeal of an agency interpretation, if the text of the relevant statute was not clear, I would next examine the legislative history, relevant precedent, and decisions of other federal or state courts for relevant, persuasive authority.

- 7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the binding precedent of the Supreme Court or the Court of Appeals in rendering a decision, regardless of my personal beliefs about that precedent.

- 8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Properly enacted statutes are presumed to be constitutional. A federal court should only declare a statute to be unconstitutional if Congress exceeded its constitutional authority or contravened a constitutional provision in enacting the statute.

- 9. Do you agree with the Federal Circuit's decision in *SKF USA, Inc. v. U.S. Customs and Border Protection*, 556 F.3d 1337 (2009) regarding the constitutionality of the Byrd Amendment to the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000? What will be your approach in cases regulating commercial speech?**

Response: The Federal Circuit's decision in *SKF USA, Inc. v. U.S. Customs and Border Protection* is a precedential decision binding on the Court of International Trade. If I am confirmed as a Judge of the United States Court of International Trade, that precedent would be binding on me and I would follow it. My approach to cases regulating commercial speech, as in all cases, would be to follow relevant precedent from the Supreme Court or the Court of Appeals for the Federal Circuit.

- 10. Please describe your understanding of the workload of the Court of International Trade. If confirmed, how do you intend to manage your caseload?**

Response: The Court of International Trade handles a steady, substantial caseload largely consisting of appeals of agency determinations in unfair trade cases and civil actions pertaining to the classifications and valuation of imported merchandise. If I am confirmed, I will consult with my colleagues on the court to understand the best practices they have developed for management of their caseloads. I will incorporate those best practices into my approach and rule on motions and issue decisions promptly. I will also seek to use my experience in the international trade field to facilitate a prompt resolution of the case.

- 11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that judges do have a role in controlling the pace and conduct of litigation. If confirmed, I would use status conferences and scheduling orders and enforce reasonable deadlines to control my docket, in addition to the approach described in response to Question 10.

- 12. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on September 26, 2012. I prepared these responses and provided them to the Department of Justice on September 30, 2012. After reviewing them

with a representative of the Department of Justice, I authorized the Department of Justice to submit them to the Senate Judiciary Committee on my behalf.

**13. Do these answers reflect your true and personal views?**

Response: Yes



**Response of Mark A. Barnett**  
**Nominee to be a Judge of the United States Court of International Trade**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: I would characterize my judicial philosophy as being committed to the rule of law, such that every party appearing before me would be treated respectfully, receiving a fair and impartial hearing, leading to the prompt resolution of the dispute. In reviewing agency determinations, I would apply the appropriate standard of review and not seek to remake the agency determination or substitute my views for an agency determination that meets that standard of review.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: If I am confirmed, I would apply the law, impartially, to each case before me. The political beliefs of the litigants, their economic status, or their status as plaintiff or defendant would not be relevant to my judgment.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The doctrine of stare decisis is part of the bedrock of our legal system and the rule of law in our country. As such, I believe it is critical that all judges bind themselves to that doctrine.



AMERICAN BAR ASSOCIATION

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June 26, 2012

VIA EMAIL AND FIRST CLASS MAILThe Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510**Re: Nomination of Katherine P. Failla  
To the United States District Court for the Southern District of New  
York**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Katherine P. Failla who has been nominated for a position on the United States District Court for the Southern District of New York. As a result of our investigation, a majority of the Committee is of the opinion that Ms. Failla is "Well Qualified." A minority of the Committee is of the opinion that Ms. Failla is "Qualified" for this position.

A copy of this letter has been provided to Ms. Failla.

Sincerely,

Allan J. Joseph  
Chaircc: Katherine P. Failla, Esq.  
The Honorable Kathy Ruemmler  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)



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of New York**

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**Executive Director**  
Yang Chen  
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August 2, 2011

#### Via Overnight Delivery

The Honorable Charles E. Schumer  
United States Senator  
757 Third Avenue, Suite 17-02  
New York, NY 10017

Re: Pamela K. Chen

Dear Senator Schumer:

On behalf of the Asian American Bar Association of New York ("AABANY"), I write in support of the nomination of Pamela K. Chen as a United States District Judge for the Southern or Eastern Districts of New York. If appointed, Ms. Chen would be only the third Asian American Article III judge in the history of the Second Circuit.

AABANY is a professional membership organization of attorneys concerned with issues affecting the Asian Pacific American ("APA") community. Incorporated in 1989, AABANY seeks not only to encourage the professional growth of its members, but also to advocate for the APA community as a whole. Today, AABANY has over 1,300 members. Before providing our support, AABANY, through its Judiciary Committee, conducted a thorough screening process, which included, among other things, a review of information Ms. Chen had supplied to AABANY and information obtained from public sources. Additionally, the committee conducted approximately 30 interviews of relevant persons, including her co-counsel and opposing counsel, as well as several federal judges in the Eastern District of New York.

AABANY believes that the current vacancies for District Judge positions in the Southern and Eastern Districts of New York present an historic opportunity to appoint only the second APA Article III jurist to either District after the Honorable Denny Chin's appointment in 1994 and the Honorable Kiyoo A. Matsumoto's appointment in 2008. According to the results of the 2010 Census, APAs comprise approximately 8.3% of the population of New York State and approximately 14.0% of the population of New York City. APAs were also the fastest growing minority group during the past decade in both New York State and nationwide. Yet, there has only been *one* APA U.S. District Judge ever appointed to the Southern District, which, among other distinguished neighborhoods, serves the

vibrant APA community of Manhattan's Chinatown. Indeed, with Judge Chin's elevation to the United States Court of Appeals for the Second Circuit last year, the Southern District currently *does not have a single* APA jurist. In the Eastern District, which, among other notable neighborhoods, serves the growing APA communities of Flushing, Queens and Sunset Park, Brooklyn, Judge Matsumoto remains the *only* APA District Judge.

Moreover, if appointed, Ms. Chen would be only the third APA and second openly gay woman to serve as a federal district court judge in the Second Circuit. She would also be only the fifth APA federal judge to serve outside of California and Hawaii. We respectfully submit that the time is ripe to redress the gross underrepresentation of the APA community in the Federal Judiciary, and, to that end, we enthusiastically support Ms. Chen's candidacy.

Ms. Chen was born in Chicago and lived there until she was five years old, after which her family moved to the suburb of Skokie. Raised by Chinese parents who immigrated to the United States shortly before this country entered World War II (and an African-American nanny), she is one of three children and has two brothers. Her parents pursued advanced educational degrees in the U.S. and were intending on returning to China, but changed their minds in view of the persecution they would face under the Communist regime. Her father ultimately worked as a financial investigator for the IRS, and her mother taught at a junior college. Ms. Chen now lives in Manhattan with her long-time partner, Amy Ruth Chester, an attorney with the U.S. Environmental Protection Agency. She is an alumna of the University of Michigan, where she obtained a B.A. in Philosophy, and the Georgetown University Law Center. She also spent a semester abroad at the University of Freiburg in Germany. After graduating from Georgetown in 1986, she joined the prominent law firm of Arnold & Porter LLP in Washington, D.C., where she practiced for three years in various areas of civil litigation. Ms. Chen thereafter worked for approximately 20 months at a smaller firm in D.C., practicing in both civil litigation and criminal defense.

After spending about the first five years of her career in the private sector, Ms. Chen then began a dedicated and much longer career in public service, with a distinct focus on civil rights work. For the next seven years, she served as a trial attorney in the Civil Rights Division of the U.S. Department of Justice ("DOJ"). She then moved to New York City in 1998 and became an Assistant United States Attorney in the Criminal Division of the U.S. Attorney's Office for the Eastern District of New York ("USAO EDNY"), graduating from the General Crimes Section to the Violent Criminal Enterprises Section, and thereafter being promoted to Chief of Civil Rights Litigation, Deputy Chief of the Public Integrity Section, and then finally to Chief of the Civil Rights Section. Ms. Chen has held that last position since July 2006 except for a brief period of time in 2008 when she accepted an opportunity to serve as the Deputy Commissioner for Enforcement in the New York State Division of Human Rights under the Spitzer Administration. She voluntarily resigned from that position when the Paterson Administration began and returned to the USAO EDNY where she has remained ever since.

Both her co-counsel and opposing counsel had generally positive, glowing things to say about Ms. Chen. Of course, we were not surprised that her colleagues in the USAO EDNY consistently praised Ms. Chen, remarking on her high intellectual ability, polished writing skills, ability to think quickly on her feet, good judgment, and balanced demeanor and temperament. Her opposing counsel also echoed those qualities, according her a high level of respect and describing her as smart, fair, just, competent, accomplished, and a consummate professional. Most notably, criminal defense attorneys touted her reputation for integrity, ethics, and fairness. The judges with whom we spoke also praised Ms. Chen's abilities and expressed no reservations about the possibility of her joining the bench, describing her as a terrific advocate, enormously smart, and displaying a great temperament.

In person, Ms. Chen comes across as smart, intelligent, and articulate. She was extremely candid during AABANY's screening process and repeatedly emphasized the respect and importance she showed towards both following the law and ensuring fairness throughout the judicial process. Most poignantly, Ms. Chen exhibited a great sense of self-awareness and a keen understanding of the different role she would play as a neutral arbiter of disputes if appointed to the bench, after having served as an advocate for nearly 25 years.

Finally, I note that Ms. Chen is also active in the community. She is a member of several bar and community organizations, and, in particular, has shown a strong connection to the APA community. For example, she has worked closely on APA voting rights and language access advocacy efforts before the New York City Board of Elections; as part of her job, she investigates allegations of hate crimes targeting APAs; she continues to provide training and educational outreach to the APA community on civil rights issues; and she informally mentors APA law and college students who have interned in her office. Ms. Chen also demonstrated an awareness of the scarcity of Asian (particularly Southeast Asian) and African language interpreters and translators in the federal courts.

In sum, AABANY believes that Ms. Chen is eminently qualified and would make tremendous contributions to the administration of justice in the federal courts. The combination of Ms. Chen's dedication and commitment to public service, her accomplished trial and appellate experiences in civil and criminal cases in both the public and private sectors, her demonstrated leadership skills, and her commitment to the APA community all uniquely qualify her to serve as a District Judge. I am confident that Ms. Chen, if appointed, will make an excellent addition to either the Southern or Eastern District bench, and that either court would benefit greatly from her service. Her nomination would be historic and would leave a legacy for the Second Circuit and the State of New York. It is therefore my privilege and honor to commend her to you.

The leadership of AABANY would welcome an opportunity to meet with you and your staff to address Ms. Chen's candidacy and to discuss generally how AABANY can be helpful to you in addressing issues related to the APA and legal communities. I can be reached at (212) 208-4144 or at [linda.lin@aabany.org](mailto:linda.lin@aabany.org). Thank you for your time and attention, and I look forward to hearing from you.

Respectfully submitted,



Linda S. Lin  
President  
Asian American Bar Association of New York

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The Honorable Jon Kyl  
 United States Senate  
 730 Hart Senate Office Building  
 Washington, D.C. 20510  
 Fax: (202) 224-2207

8/18/12

Re: Confirmation of United States District Court Judge Nominee Pamela K. Chen

Dear Senator Kyl:

As the elected Constable of the McDowell Mountain Precinct of Maricopa County, former FBI Agent, United States Marine combat veteran and loyal constituent, I am writing in support of the nomination of Pamela K. Chen to become a United States District Court Judge in the Eastern District of New York. I am familiar with Ms. Chen's career as a federal prosecutor because she works closely with my daughter Monica, who worked for many years as an Assistant United States Attorney in Brooklyn and is currently employed as a Department of Justice Trial Attorney in Washington, DC.

Ms. Chen is a career prosecutor with expertise in both criminal and civil litigation. As an Assistant United States Attorney, she has prosecuted a wide range of cases, including terrorism, immigration, narcotics trafficking, gang violence and human trafficking. Her prosecution of terrorism and human trafficking cases been heralded as ground-breaking. Moreover, she has a reputation for fairness and integrity. She is, as United States Attorney Loretta E. Lynch remarked, "simply, the complete package." (Reuters, *Brooklyn Prosecutor Recommended For Federal Bench*, August 2, 2012.)

Ms. Chen's intelligence, temperament and experience make her an excellent choice for the bench. I urge you to confirm Ms. Chen as a federal district court judge in the Eastern District of New York.

Respectfully,



*Homeland Security Investigations  
Office of the Special Agent in Charge*

601 W. 26<sup>th</sup> Street, Suite 700  
New York, NY 10001

SEP 13 2012



**Homeland  
Security**

The Honorable Patrick J. Leahy  
Chairman of the Senate Judiciary Committee  
United States Senate  
437 Russell Senate Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member of the Senate Judiciary Committee  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Re: Confirmation of United States District Court Judge Nominee Pamela K. Chen

Dear Senators Leahy and Grassley:

As the Special Agent in Charge of the New York Field Office of Department of Homeland Security, Homeland Security Investigations (HSI), I am writing to support the nomination of Pamela K. Chen to become a United States District Court Judge in the Eastern District of New York.

For many years, Ms. Chen has worked closely with HSI in the investigation and prosecution of human trafficking and immigration cases. She is recognized for her expertise in the prosecution of human trafficking cases, and is the go-to prosecutor for HSI in this area. Ms. Chen is well known within my agency for her intellect, legal skills, tenacity, integrity and diplomacy. As recently noted by United States Attorney Loretta E. Lynch, Ms. Chen is "the complete package." (Reuters, Brooklyn Prosecutor Recommended For Federal Bench, August 2, 2012.)

I believe that Ms. Chen's intelligence, temperament and experience make her an excellent choice for the bench, and I recommend that she be confirmed as a United States District Court Judge in the Eastern District of New York.

Respectfully,

James T. Hayes, Jr.  
Special Agent in Charge  
HSI New York

**NEW YORK  
CITY BAR**

**COMMITTEE ON THE JUDICIARY**

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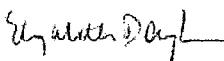
September 15, 2012

The Honorable Patrick J. Leahy  
Chairman, Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington, D.C. 20510

Dear Senator Leahy:

We are pleased to inform you that the Committee on the  
Judiciary of the New York City Bar has found Pamela Ki Mai Chen,  
Esq., APPROVED for appointment to the United States District  
Court for the Eastern District of New York.

Very truly yours,



Elizabeth Donoghue  
Chair



September 17, 2012

The Honorable Patrick J. Leahy  
Chairman of the Senate Judiciary Committee  
United States Senate  
437 Russell Senate Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member of the Senate Judiciary Committee  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Re: Confirmation of United States District Court Judge Nominee Pamela K. Chen

Dear Senators Leahy and Grassley:

We write in support of the nomination of Pamela K. Chen to become a United States District Court Judge in the Eastern District of New York. We have worked with Ms. Chen during her 14-year tenure as a federal prosecutor in the United States Attorney's Office in the Eastern District of New York.

Ms. Chen is a tenacious prosecutor, who has dedicated her career to public service. At the United States Attorney's Office, she has prosecuted a vast array of cases that has included terrorism, gang violence, narcotics trafficking, immigration crimes and civil rights violations. As a member of the Violent Criminal Enterprises Section, Ms. Chen prosecuted numerous gang cases involving murders, shootings, assaults and other violence, as well as one of the earliest post-9/11 terrorism cases. Ms. Chen has also established a reputation as an expert in the investigation and prosecution of human trafficking cases, and has led the prosecution of ground-breaking cases in this area. Ms. Chen is respected by her peers, both colleagues and adversaries, not only for her intelligence and legal skills, but for her integrity, sense of fairness and genial personality.

We believe that Ms. Chen's intelligence, temperament and experience make her an excellent

choice for the bench, and we urge you to confirm her nomination for the United States District Court in the Eastern District of New York.

Respectfully,

Dwight Holton, former United States Attorney for the District of Oregon (2010-2011) and former Assistant United States Attorney for the Eastern District of New York

Leslie R. Caldwell, Partner, Morgan Lewis & Bockius; former Assistant U.S. Attorney for the Eastern District of New York (Chief, Violent Criminal Enterprises Section) and Northern District of California (Chief, Criminal Division) and former Director of the Enron Task Force

Peter Grupe, former Assistant Special Agent in Charge of White Collar Crime with the New York Office of the Federal Bureau of Investigation (retired 2011)

Michael D. Harkins, Managing Director, Risk Control Strategies; former Supervisory Special Agent with the New York Office of Federal Bureau of Investigation

Eric Corngold, Partner, Friedman, Kaplan, Seiler & Adelman LLP; former Assistant United States Attorney for the Eastern District of New York (First Assistant United States Attorney, 2005-2007)

Richard Donoghue, former Assistant United States Attorney for the Eastern District of New York (Chief, Criminal Division)

Kelly Currie, Partner, Crowell & Moring LLP; former Assistant United States Attorney for the Eastern District of New York (Deputy Chief, Criminal Division)

John Curran, Managing Director, Stroz Friedberg; former Assistant United States Attorney for the Eastern District of New York (Chief, Violent Criminal Enterprises and Narcotics Sections)

Mitra Hormozi, Partner, Kirkland & Ellis; former Assistant United States Attorney for the Eastern District of New York (Chief, Organized Crime Section)

Kelly A. Moore, Partner, Morgan, Lewis & Bockius; former Assistant United States Attorney, Eastern District of New York (Chief, Violent Crimes and Terrorism Section)

Lee Freedman, former Assistant United States Attorney for the Eastern District of New York (Chief, General Crimes)

Colleen Kavanagh, former Assistant United States Attorney for the Eastern District of New York (Chief, General Crimes)

Andrew Genser, Partner, Kirkland & Ellis; former Assistant United States Attorney for the Eastern District of New York (Organized Crime Section)

Steven Weiser, Deputy General Counsel, Silver Point Capital; former Assistant United States Attorney for the Eastern District of New York (Violent Crimes and Terrorism Section)

Lauren Resnick, former Assistant United States Attorney for the Eastern District of New York (Organized Crime Section)

Bernadette Miragliotta, former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Michael Beys, Partner, Beys, Stein & Mobargh; former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Samantha L. Schreiber, former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Alphonso Grant, former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Christopher Gunther, Partner, Skadden Arps; former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Andrew Frisch, former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Michele DeLong, former Assistant United States Attorney for the Eastern District of New York (Violent Criminal Enterprises Section)

Melissa Marrus, former Assistant United States Attorney for the Eastern District of New York

Daniel Wenner, former Assistant United States Attorney for the Eastern District of New York



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AMERICAN BAR ASSOCIATION

VIA EMAIL AND FIRST CLASS MAIL

August 7, 2012

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Pamela K. Chen***  
***To the United States District Court for the Eastern District of New York***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Pamela K. Chen who has been nominated for a position on the United States District Court for the Eastern District of New York. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Chen is Qualified for this position.

A copy of this letter has been provided to Ms. Chen.

Sincerely,

Allan J. Joseph  
Chair

cc: Pamela K. Chen, Esq.  
The Honorable Kathy Ruemmler  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)



AMERICAN BAR ASSOCIATION

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June 26, 2012

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Nomination of Hon. Troy L. Nunley  
To the United States District Court for the Eastern District of  
California**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Troy L. Nunley who has been nominated for a position on the United States District Court for the Eastern District of California. As a result of our investigation, a majority of the Committee is of the opinion that Judge Nunley is "Qualified." A minority of the Committee is of the opinion that Judge Nunley is "Well Qualified" for this position. There was one recusal.

A copy of this letter has been provided to Judge Nunley.

Sincerely,

Allan J. Joseph  
Chair

cc: Hon. Troy L. Nunley  
The Honorable Kathy Ruemmler  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

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AMERICAN BAR ASSOCIATION

**Standing Committee on  
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Attn: Denise A. Cardman  
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**VIA EMAIL AND FIRST CLASS MAIL**

June 26, 2012

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Magistrate Judge Sheri P. Chappell  
To the United States District Court for the Middle District of Florida***

Dear Chairman Leahy:

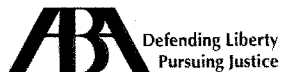
The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Sheri P. Chappell who has been nominated for a position on the United States District Court for the Middle District of Florida. As a result of our investigation, the Committee is of the unanimous opinion that Judge Chappell is "Qualified" for this position.

A copy of this letter has been provided to Judge Chappell.

Sincerely,

Allan J. Joseph  
Chair

cc: Magistrate Judge Sheri P. Chappell  
The Honorable Kathy Ruemmler  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)



AMERICAN BAR ASSOCIATION

**Standing Committee on  
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July 12, 2012

**VIA EMAIL AND FIRST CLASS MAIL**

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Mark A. Barnett***  
***To the United States Court of International Trade***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mark A. Barnett who has been nominated for a position on the United States Court of International Trade. As a result of our investigation, a majority of the Committee is of the opinion that Mark Barnett is "Well Qualified." A minority of the Committee is of the opinion that Mr. Barnett is "Qualified" for this position.

A copy of this letter has been provided to Mr. Barnett.

Sincerely,

Allan J. Joseph  
Chair

cc: Mark A. Barnett, Esq.  
The Honorable Kathy Ruemmler  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

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**September 19, 2012  
10:00 a.m.  
Dirksen 226  
Senate Judiciary Committee  
Introduction for Judge Sheri Polster Chappell**

Chairman Leahy and Ranking Member  
Grassley,

I am pleased today to introduce Sheri  
Polster Chappell, nominee for the  
United States District Court for the  
Middle District of Florida.



Our state has a rich tradition of working from both sides of the aisle to put forward strong candidates to fill vacancies on the bench.

I hope that we in the Senate can work together to eliminate the backlog of qualified judicial nominees as soon as possible, so that our nation's Courts can function expeditiously and fairly, as they are intended.

Judge Chappell is originally from Ft. Myers, Florida.

She is joined today by her husband Christopher Chappell, their sons Michael and Zachary, her brother Barry Polster who has come in from Wisconsin, and her law clerks, Douglas Kemp and Brigette Willauer and Brigette's husband Nick Mizell, a former law clerk of Judge Chappell's.

Judge Chappell has served as a United States Magistrate Judge for the Middle District of Florida since 2003. Prior, she was a Lee County Court Judge for the Twentieth Judicial Circuit from 2000 to 2003. She began her career as an Assistant State Attorney for the Twentieth Judicial Circuit where she served from 1987 to 2000.

Judge Chappell is an active member of the community and has served on the Florida Prosecuting Attorneys Association, the Domestic Violence Task Force, and the Truancy Board. She earned her Bachelor of Arts degree at the University of Wisconsin and her Juris Doctor at Nova Southeastern University.

Senator Barbara Boxer Statement on Nomination of Troy L. Nunley to be  
United States District Judge for the Central District of California  
September 19, 2012

Chairman Leahy, Ranking Member Grassley, I am proud to offer my support for the confirmation of California Superior Court Judge Troy L. Nunley to the U.S. District Court for the Central District of California. Judge Nunley was recommended to the President by my colleague, Senator Feinstein, and will be a great addition to the federal bench.

Judge Nunley will bring to the bench his broad experience as a skilled attorney and a state court judge. A graduate of St. Mary's and the University of California, Hastings College of Law, Judge Nunley spent the majority of his early legal career working in the Alameda County District Attorney's Office as Deputy District Attorney. After a few years in private practice, he joined the Department of Justice as a Deputy Attorney General in the Sacramento office.

In 2002 he was nominated to join the California state bench as a Superior Court Judge in Sacramento, where he has served with distinction.

I congratulate Judge Nunley and his family on this important day, and urge my colleagues in the Senate Judiciary to support this highly qualified nominee to the federal bench.

## PREPARED REMARKS BEFORE THE JUDICIARY COMMITTEE

Thank you very much, Mr. Chairman.

I want to thank Senator Leahy for being so prompt in scheduling these hearings and also for allowing me to testify today. I am here to introduce Sheri Polster Chappell, who has been nominated by the President to serve as a District Court Judge for the Middle District Court of Florida.

Mr. Chairman, I take the process of nominating judges very seriously. I appreciate the critical role this committee plays in evaluating each nominee. I know this committee will examine the record and career of Sheri Polster Chappell. Ms. Chappell is an intelligent and accomplished individual. She has extensive experience as an attorney in Central Florida and has a lengthy record of service to the community. She is also the first graduate of her law school to be nominated and potentially serve as a District Court Judge.

Sheri Polster Chappell's educational background does not fail to impress; she received her bachelor's degree from University of Wisconsin – Madison and her law degree from NOVA Southeastern University Law School. She began her legal career in 1987 as an Assistant State Attorney in the Twentieth Judicial Circuit of Florida. In 2000, Ms. Chappell began to serve as a County Court Judge in Lee County, Florida. In 2003, Ms. Chappell was appointed to serve as U.S. Magistrate Judge for the Middle District of Florida, which she is currently serving.

Ms. Chappell also has a familiarity working with the people in the United States District Court for the Middle District of Florida. As the U.S. Magistrate

Judge, Ms. Chappell is the only Judge present in the court house and responsible in handling majority of the case load that enters. Ms. Chappell is also an active member of the Federal Bar Association, the Lee County Bar Association, and the Inns of Court.

I am honored to introduce her today, and she has her family with her here and former colleagues, who I am sure she will introduce to the Committee. Mr. Chairman, thank you for giving this nomination the full consideration it deserves.





**NOMINATION OF SHELLY DECKERT DICK, OF LOUISIANA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA; ANDREW PATRICK GORDON, OF NEVADA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; KETANJI BROWN JACKSON, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; AND BEVERLY REID O'CONNELL, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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**WEDNESDAY, DECEMBER 12, 2012**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Blumenthal, Grassley, and Lee.

Senator WHITEHOUSE. Good morning, everyone. The hearing will come to order. We have several district judges who are having their nominations hearing today. One is from the Majority Leader's home State of Nevada. The Majority Leader has more pressing business than the average Senator on the floor, and so we will vary from the usual procedure for these hearings to allow the Majority Leader to make his remarks regarding Andrew Gordon, and then we will continue with a more regular order thereafter.

The Majority Leader is recognized.

**PRESENTATION OF ANDREW PATRICK GORDON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Mr. Chairman, thank you very, very much. I appreciate the courtesy that you have shown me.

It really is a pleasure to be here today to introduce Andrew Gordon to become a United States District Judge for Nevada. He is a fine lawyer. Mr. President, I look—I am sorry. Mr. Chairman, I look forward to opportunities to remind people that I was a trial lawyer. I am very proud of that and am very happy to introduce to you and the Senate Andrew Gordon.

He is an outstanding judge—I am so sorry. I have got fiscal cliff on the brain because I have to go to some meetings as soon as I finish here to deal with that, so I am sorry. But he has had a lot

of litigation experience. His peers in Nevada and, Mr. President, the members of the Nevada Federal judiciary, when I mentioned to them that I was considering Andrew, they were elated. He has a reputation that is unsurpassed. He has the respect of those who know him as a person and as an attorney. He is going to be a great judge.

The law firm of McDonald Carano Wilson has been in existence for a long time. The man whose name is first on that, McDonald, was a long-time friend of mine. He was a protege, Mr. President, of Senator Pat McCarran. That is a very well-established firm. I have great respect for the firm, and I recognize what a great law firm it is, and the last judge that we had approved for Nevada came from that same law firm.

He grew up in Las Vegas. Andrew grew up in Las Vegas, law degree from Harvard, bachelor's from Claremont McKenna College, which is also called the "Harvard of the West." Throughout his legal career, Andrew's practice has focused on civil litigation and alternative dispute resolution. His area of expertise is a lot, but he has been noted for his expertise in complex commercial disputes.

Mr. President, I want to take just a minute and reflect again on my practice of the law. When I practiced law in Nevada, it was a much smaller bar. We all knew each other. And his good father I knew extremely well. Most all the time he practiced, his father practiced alone. He had the same kind of law practice that I had. People asked what kind of cases I took, and I said, "Anything I could get." And that is what his father has always done. But Andrew has become certainly more focused than his father or me, but his dad must be extremely, extremely proud of Andrew, which I know he is.

I want to just relate quickly to the Committee that Andrew has extensive experience with general business disputes, shareholder derivative actions, construction, real estate, and title disputes, landlord-tenant issues, employment disputes, and securities claims. He has served as an arbitrator and a mediator. And he is a commercial construction employment arbitrator for the American Arbitration Association.

I am very impressed with his dedication to the State and to the legal community. I look forward to his being confirmed. He will be an outstanding judge for our country.

Thank you very much, Mr. Chairman.

Senator WHITEHOUSE. I thank the Majority Leader for taking the trouble to come to this Committee hearing on behalf of his candidate, and on behalf of all of us, I wish you well in the fiscal cliff meetings you must attend.

Chairman Boxer.

Senator BOXER. Thank you so very much—

Senator REID. Mr. President, if I could just interrupt, I keep calling you "Mr. President," but—

Senator WHITEHOUSE. It is a habit of the floor.

Senator REID. Yes, that's true. Dean was not here when I started, and he is kind of small. I did not see him come in.

[Laughter.]

Senator REID. I appreciate his—we were involved in really a difficult election problem in Nevada when I gave the Senate Andrew's

name, so we did not get the usual consultation we normally do. So I appreciate very much Dean supporting this good man.

Senator BOXER. Mr. Chairman, I would be happy to yield to Senator Heller so you do not break up the testimony on behalf of their nominee.

Senator WHITEHOUSE. In that case, through the kindness of Chairman Boxer, Senator Heller.

**PRESENTATION OF ANDREW PATRICK GORDON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. DEAN HELLER, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator HELLER. Thank you very much, Senator, and to you, Chairman and Ranking Member. Thank you very much for taking time and allowing me to spend a few minutes with you. It is always an honor and a pleasure to be here with Senator Reid as we move forward on these important vacancies on the federal bench.

Judicial nominations and subsequent confirmations for qualified individuals should be addressed in a timely manner, and I am pleased to say that we have accomplished this goal in the 112th Congress due to a bipartisan effort both on this Committee and myself and Senator Reid.

In Nevada, where our delegation is certainly not one-sided, it is critical for us to work together to find qualified candidates who will uphold America's principles of impartiality under the law. And I believe Mr. Gordon is a perfect example of this and a clear indication with this bilateral effort we can find middle ground in instances where it is necessary.

That being said, I believe Andrew Gordon will make a wonderful district court judge in the State of Nevada. Mr. Gordon earned his B.A. cum laude from Claremont McKenna College in 1984 and graduated from Harvard Law, as mentioned earlier, in 1987. And he is currently a partner in the law firm of McDonald Carano Wilson, where he began as an associate in 1994. I would also like to add that this is the same firm which Ms. Du, a nominee that was confirmed by this Committee earlier this year, came from. Mr. Gordon has focused on civil litigation, alternative dispute resolution, and a primary emphasis on complex commercial disputes.

Mr. Gordon has been featured as one of the Best Lawyers of 2012, Best Lawyers in America, as well as VEGAS INC Top Lawyer in 2012. Outside of his professional duties, he is a civic leader within his community, coaching his local high school lacrosse team as well as taking a leadership role in his church.

So, again, thank you very much for the opportunity to introduce this outstanding Nevadan to the community. I look forward to his testimony as well as the Committee's consideration of Mr. Gordon's nomination. Thank you. Again, thank you for yielding.

Senator WHITEHOUSE. Thank you, Senator Heller. We appreciate your testimony today and your support for this nominee.

Senator HELLER. Thank you.

Senator WHITEHOUSE. Senator Boxer.

**PRESENTATION OF BEVERLY REID O'CONNELL, NOMINEE TO  
BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALI-  
FORNIA, BY HON. BARBARA BOXER, A U.S. SENATOR FROM  
THE STATE OF CALIFORNIA**

Senator BOXER. Thank you so very much, Mr. Chairman and Senator Grassley. I am very honored today to introduce to you Judge Beverly Reid O'Connell, who has been nominated to the Central District Court of California. Will you stand?

Judge Reid O'Connell has had a diverse legal career, including more than seven years as an exemplary superior court justice in Los Angeles. She is here today with her spouse, Daniel, Daniel O'Connell, a deputy district attorney in Los Angeles. Also here is her sister, Linda Reid, and Linda's spouse, Sherry Burns.

A lifelong Southern Californian, Judge Reid O'Connell grew up in Northridge, where she was valedictorian of her high school, attending UCLA and Pepperdine Law School, where she was managing editor of the Law Review, and graduated magna cum laude.

She spent five years as an associate at Morrison & Foerster, and in 1995 joined the Department of Justice as an Assistant U.S. Attorney, where she spent 10 years gaining critical criminal law and trial experience.

Judge O'Connell excelled as an Assistant U.S. Attorney, and she was the lead attorney on a case, Mr. Chairman, that led to the indictment of the highest-ranking member of a major drug-trafficking organization on U.S. soil. For her work on this case, she was awarded the DEA Administrator's Award for Exceptional Service, and she has received numerous other awards from the DEA, the FBI, and local governments.

Judge Reid O'Connell is uniquely qualified to take on the challenge of serving one of the Nation's busiest courts. California's Central District has 655 weighted filings per judgeship, nearly 30 percent above the national average. Appointed superior court judge in Los Angeles in 2005 by then-Governor Schwarzenegger, Judge Reid O'Connell is the assistant supervising judge of the North Valley Judicial District, where she is responsible for supervising three court-houses and 22 bench officers. An expert in criminal law, she presides over all aspects of felony criminal cases before that court.

In addition to being well respected for her demeanor on the bench and her stellar legal intellect, she is known by her colleagues as a great manager and supervisor, attributes which will serve her well at the busy Central District. She is also very active in the Southern California legal community. She teaches continuing education courses to California judges on criminal law. She is an adjunct professor at the law schools of Pepperdine and Loyola.

The judge was inspired to become a lawyer during an eighth grade field trip to the California Supreme Court, and, Mr. Chairman and Senator Grassley, I think this is another great example that shows the importance of teaching our children the possibilities for them if they work hard. So as a result of this experiences as a youngster, she created a program that brings inner-city students to the superior court to educate them about the legal process and to spend time with judges and lawyers.

Senator Feinstein is unable to join us here today due to a scheduling conflict, but she has personally shared with me how highly she thinks of Judge Reid O'Connell.

Judge Reid O'Connell will be a tremendous addition to the Central District. I am finishing now. I want to say I actually cut out about two pages of more experience that she has had, but I just want to say to both of you and for you to relay to your colleagues that this is one great nominee, and I hope we can move her quickly because we are so short of judges in this district.

Thank you very much.

Senator WHITEHOUSE. Thank you very much, Senator Boxer.

Senator Landrieu and Senator Vitter for the Louisiana candidate. Senator Landrieu.

**PRESENTATION OF SHELLY DECKERT DICK, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA, BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator LANDRIEU. Thank you, Mr. Chairman and Ranking Member, for taking your time to conduct this hearing so late in our session, but so important to the nominees that are still pending action.

It is our privilege to be here, and I will keep my remarks short, and Senator Vitter will add to these, but we are both here in support of Mrs. Shelly Deckert Dick as a nominee for judge of the U.S. Middle District. And, Shelly, if you would stand with your husband, please, as well? Welcome to both of you.

She is also joined by her parents, Ray and Myrna; her husband, Kelley, who has been introduced; and her two children, Barrett and Austin. And if they would stand, please? Wonderful. Thank you all for being with your mom for this very special day. She also has two proud colleagues with her: Amy Newsom and Carole Ellender.

Shelly Dick comes equipped, Mr. Chairman, with decades of federal court litigation experience, which I think is very important when I look for nominees to suggest to the administration. She brings to this Committee a very thorough understanding of federal law, an unquestionably fair and even-handed temperament, and a wonderful attitude generally.

She is a current resident of Baton Rouge. However, she was born in El Paso, Texas. I do not know how she got by the screening on that count, but she did. She earned a bachelor's degree from the University of Texas in Austin and graduated with honors. She brings a tremendous amount of experience both from the private and public sector. She went on to earn her degree from Louisiana State University where she was a member of the Louisiana Law Review.

Early in her service, she clerked with one of our most outstanding judges who actually went on to be our Supreme Court Justice, Catherine "Kitty" Kimball, when she was in the 18th district court.

Following law school, she became an associate attorney with one of our local firms, Gary, Field, Landry & Bradford, before becoming a founding partner in her own firm. She has represented both plaintiffs and defendants. I think she brings a lot of common sense

and common ground to the bench, which is very important, and a true understanding of the law and its ramifications.

She is well established and well respected in the legal community, and the only thing that I would add, Mr. Chairman, is that I am very, very impressed with her work, not only domestically in the aftermath of Katrina and Rita and being very engaged in the rebuilding of our community, but she has also volunteered dozens of times for international trips to Cambodia, South Africa, and Kenya with her service to mission work abroad as well as at home.

So it is my great honor to present Shelly Dick to you, and I am sure that you will find her credentials in order.

Senator WHITEHOUSE. Thank you, Senator Landrieu.

Senator Vitter.

**PRESENTATION OF SHELLY DECKERT DICK, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA, BY HON. DAVID VITTER, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator VITTER. Thank you, Mr. Chairman and Members, and I am honored to join Mary here in strong support of this nomination and urge your positive consideration. I will not go through all of Shelly's background. Mary has outlined that very well. But I think the summary of it is it is a terrifically solid legal background, a lot of good qualifications, and it is real-world practice experience, which is invaluable, particularly for the district court position. And so I think she will bring that practitioner's real-world experience to bear in the district court in a very positive and valuable way.

So, again, I strongly comment to you Shelly Dick and urge and look forward to her confirmation. Thank you.

Senator WHITEHOUSE. Thank you very much, Senator Vitter.

Congresswoman Norton, thank you so much for being here on behalf of your nominee. Please proceed.

**PRESENTATION OF KETANJI BROWN JACKSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you, Mr. Chairman and Mr. Grassley.

This Committee and, I believe, the Senate will have an opportunity to confirm an unusually outstanding candidate for the United States District Court for the District of Columbia, and I speak to more than her stellar paper credentials when I speak of the qualifications of Ketanji Brown Jackson. I speak of more than her present position as Vice Chair and Commissioner of the United States Sentencing Commission, her work with major law firms in Washington and Boston, her work with mass tort mediations in the Feinberg Group here, her judicial clerkships on the Supreme Court of the United States with Justice Stephen Breyer, on the United States Court of Appeals for the First Circuit with Judge Bruce Selya, and before that her clerkship on the United States District Court for the District of Massachusetts with Judge Patti Saris, and, of course, of her education at Harvard Law School where she graduated cum laude, having been supervising editor of *Harvard*

*Law Review*, and her undergraduate education at Harvard, Radcliffe College, where she graduated magna cum laude.

Mr. Chairman, Ms. Jackson brings the entire package, if you will forgive me, in one candidate: top-of-the-mark academic background, practice in the criminal law, the civil law, and mediation, and in the directly relevant and important skill of sentencing.

Mr. Chairman, the competition for federal judgeships here in the District of Columbia is particularly tough because this is one of the most talented bars in the country, many federal and Supreme Court clerks in practice and many others equally well qualified.

Therefore, when the President gave me senatorial courtesy, I established a Nominating Commission of highly qualified lawyers and lay people in order to engage in a careful, deliberative process.

The citizens of my district, as you know, are denied many of the ordinary rights enjoyed by other Americans. We are pleased that the President has given us the right to participate in the selection of judges whose jurisdiction over criminal and civil matters will directly affect the citizens of the District of Columbia. This Commission is chaired by a past president of the D.C. bar, Pauline Schneider, and the Commission has done an excellent job of vetting and investigating all the candidates they recommend to me. They recommend three, and then I am left with the unenviable task of selecting one from among a constellation of legal stars to recommend to the President.

Mr. Chairman, the best evidence in personnel selection of any kind is how those who have worked with the candidate or observed her view her. I will not amaze you or bore you with the consistent superlatives used to describe her work and Ms. Jackson's personal disposition. I will leave you with one. The Chair of the Commission spoke to Justice Breyer, and I am quoting her now. The first words out of his mouth when he picked up the phone were, "Hire her." He went on to say, and she is quoting: "She is great, she is brilliant. She is a mix of common sense, thoughtfulness. She is decent. She is very smart and has the mix of skills and experience we need on the bench." He endorsed her enthusiastically.

Mr. Chairman, there are words that go like these: "Enough said." Those words come to mind. And thank you very much.

Senator WHITEHOUSE. Thank you very much, Congresswoman Norton.

And our other witness, I gather also on her behalf, is Congressman Ryan. Welcome. Thank you for coming over to this side of the Capitol.

**PRESENTATION OF KETANJI BROWN JACKSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. PAUL RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Representative RYAN. Chairman, thank you. It is nice to be with you. And, Ranking Member Grassley, it is great to see you again. We spent a lot of time together over the prior few months.

I appreciate the opportunity to share my favorable recommendation for Ketanji Brown Jackson. I know she is clearly qualified. But it bears repeating just how qualified she is.

Ketanji currently serves as the Vice Chairman and Commissioner of the U.S. Sentencing Commission. She served as counsel at Morrison & Foerster, focusing on criminal and civil appellate litigation in State and federal courts. She was an assistant federal public defender in the Appeals Division of the Office of the Federal Public Defender in the District of Columbia. She has completed three judicial clerkships—at the district court level, at the appeals court level, and at the Supreme Court. She is a graduate of Harvard Law School. She was supervising editor of *Harvard Law Review*. She took an active role in Black Law Students Association. She is an undergraduate and graduate of Harvard.

I am here to serve as a character witness. I know her. We are family by marriage. I would like to introduce her family because they are here with us today, and we are all extremely proud of her. Her husband, Patrick Jackson, is here with us, if he could stand. Her daughters, Talia and Leila, are here with us as well today. Her parents, Johnny and Ellery Brown, are here with us today. Her brother, Lieutenant Ketajh Brown is here with us today. Her in-laws, Gardner and Pamela Jackson, are here with us today. And her brother and sister-in-law, who are my brother-and sister-in-law, William and Dana Jackson, are here with us as well today.

Now, our politics may differ, but my praise for Ketanji's intellect, for her character, for her integrity, it is unequivocal. She is an amazing person, and I favorably recommend your consideration.

Thank you.

Senator WHITEHOUSE. Thank you very much, Congressman Ryan. We are delighted to have both you and Congresswoman Norton in support of this candidate. That speaks volumes, and we hope that she, along with the others, can achieve rapid confirmation.

Let me take a brief moment while we call the candidates to come forward and take their seats, then I will have some very brief remarks, as I believe the Ranking Member will, and in the meantime, without objection, I will put into the record the statement of Chairman Leahy on behalf of these candidates.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Actually, before everybody sits down, let me get you sworn. If I could ask you all to raise your right hand. Do you affirm that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. DICK. I do.

Mr. GORDON. I do.

Ms. JACKSON. I do.

Judge O'CONNELL. I do.

Senator WHITEHOUSE. Thank you very much. Please be seated. We are delighted that you are all here. In a moment, you will have an opportunity to introduce yourself, and to the extent they have not already been introduced and you wish to make introductions or make further introductions to introduce your family and friends



who are here and then to take whatever questions we may have of you.

This is a significant hearing. Voting to confirm an individual to the federal bench is one of the most important and lasting decisions that a Senator can make. Every day federal judges make decisions that affect the lives of ordinary Americans across this country.

In doing so, judges must respect several things: first, the role of Congress as the elected representatives of the American people; second, that cases should be decided based on the law and the facts; third, a duty not to prejudge any case, but to listen to every party that comes before them, whether of high or low station, with equal respect; to respect precedent; and also to confine themselves to the issues that the court must properly decide. I hope that each judicial nominee we hear from today understands the importance of those elemental principles.

Judicial nominees also must have the requisite legal skill to serve as a federal judge, and each of today's nominees has a very impressive record of achievement. As a result, I believe that each of these nominees deserves prompt consideration. We need good judges and we need them in adequate number for our system of justice to function. And, of course, our system of justice, it goes without saying, is one of the badges of American democracy that we are proud of and that we display to the rest of the world.

Too often, over the past four years, judicial nominees have been approved by this Committee with bipartisan support. I want to express my appreciation to the Ranking Member and to his predecessors for the, I think, sensible and smooth way in which nominees have moved through the Judiciary Committee. Unfortunately, they then turn up on the executive calendar and can be held up there for months and months on the Senate floor. It is my hope that moving forward we can come together and return the Senate to its best traditions of holding timely up-or-down votes on nominees who have been approved by the Committee. Certainly confirming the 13 judicial nominees who are currently sitting on the executive calendar and who have been pending since before the August recess would be an important step in the right direction.

There is, I can assure the nominees, not much of a turnout at this point today. Do not be discouraged by that. It is actually a good thing. It is a sign of non-controversialness, which is a very good thing in a judicial nominee.

With that, I will turn to our Ranking Member, Senator Grassley.

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR  
FROM THE STATE OF IOWA**

Senator GRASSLEY. First of all, I welcome all of you, and I will spend most of my time asking each one of you a couple questions, and then probably submit some questions for the record for you to answer, and I hope that you will answer; and if we have some follow-up to your written answers, that you will also answer them speedily.

With today's hearing during this Congress, we have held 29 nomination hearings for 116 judicial nominees. In total, the Senate has confirmed 164 district and circuit nominees. The Committee has

made good and steady progress in confirming these judicial nominees. This year alone, we have confirmed 42 district and circuit judges, which is significantly higher than were confirmed in the last Presidential election year.

During this Congress, we have confirmed 104 judges. That matches the highest number of confirmations done by this Committee during a Congress when President Bush was in office. That took place in the 108th Congress when Republicans were in the majority. So I think by any objective measure, one would have to conclude that we are treating this President and his nominees quite fairly.

I have also spoken about the President getting nominees up here faster than he has as well because we cannot consider you folks until you are actually nominated.

I am going to put in the record a brief description of each of your qualifications, but I will not go into them now because they are repetitive of what other Senators have said about you. But, obviously, you all have very solid backgrounds.

I will put the rest of the statement in the record.

Senator WHITEHOUSE. Without objection.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator WHITEHOUSE. Senator Blumenthal, do you wish to make some brief remarks?

Senator BLUMENTHAL. Very briefly. Thank you, Senator Whitehouse. Thank you to Senator Leahy, the Chairman of the Judiciary Committee, who could not be here today, for moving these nominations along, which I think are very important to the integrity and efficacy of our judicial process. And thank you to the Ranking Member, Senator Grassley, for his devotion and dedication and civility in this process.

I would agree with Senator Whitehouse that the turnout here is a good thing for you. Even better for you is the turnout from your families, and I want to thank them for the sacrifices that they will be making for the long hours that you have devoted in your careers and will be devoting even more as you assume this very, very important role. As a lawyer who engaged in litigation for most of my career very actively in the federal as well as our State courts in Connecticut, I know firsthand how profoundly significant you will be in exemplifying the voice and the face of justice to the majority of Americans who come into your courtrooms. You will be the last stop for many of them, although they may have the opportunity to go to the court of appeals. For those who are sentenced, for the civil trials that you do, and for the criminal defendants whose futures you adjudicate, you will be a pivotal and profoundly important force for good in their lives and in the lives of many, many others whose lives you will touch.

So I want to thank you for the fairness and dedication and just join finally in seconding Representative Ryan. Our politics may differ. I do not even know what your politics are. But you are profoundly impressive candidates, and I look forward to your service on the bench and our judicial system.

Thank you.

Senator WHITEHOUSE. Thank you, Senator Blumenthal.

It is a delight when Senator Blumenthal attends these hearings because he is one of the most accomplished lawyers in the Senate. We were Attorneys General together, but he had been there a long time before I got there, and he stayed on as Attorney General after I left. He was working on becoming the senior Attorney General in the country, but he ran for this office, happily. We call that person the "Eternal General" and he never quite got that characteristic. But I believe he has argued more cases in the Supreme Court than any Member of the Senate, and so he knows something about judging, and I am delighted that he is here.

Ms. Dick, if you would like to provide whatever opening statement you would care to and make whatever recognitions you would care to, you are welcome here and you are recognized.

**STATEMENT OF SHELLY DECKERT DICK, NOMINEE TO BE  
DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA**

Ms. DICK. Thank you. Thank you, Mr. Chairman. I will waive an opening statement and instead defer to the questions of the Members of the Committee. But I would like to make a few acknowledgments.

First, I would like to thank Senator Landrieu for her very kind and gracious words and for her confidence in recommending me to President Obama for consideration.

I would also like to thank Senator Vitter for his presence and his support of my nomination. I am truly humbled and feel very privileged by the bipartisan support of my two home Senators.

I would, of course, like to thank President Obama for his confidence in making the nomination that we are here for today.

I would like to acknowledge and thank the Members of the Committee: Chairperson Whitehouse for presiding; Ranking Member Grassley for your commitment to this very important process; Senator Blumenthal, thank you very much for being here; and, finally, I would like to thank Chairperson Leahy and the Committee for scheduling this hearing so late in the session and with such very important pressing matters before our country, and continuing to show your commitment to maintaining a very strong and independent judiciary, my deepest gratitude for that.

By way of recognition, there are some people here with me that I would like to acknowledge. First are my parents. Myrna and Ray Deckert are here from El Paso, Texas, and they have been an inspiration to me my entire life, and I am so grateful that they could make this trip and be here with me.

My husband of 29 years, he is the wind beneath my wings, my husband, Kelley.

Two of my three sons are here: Barrett and Austin. I am very proud of them and I am very glad that they could be here. My oldest son was not able to be here, but he will be watching on Webcast. He is undertaking an examination of a different sort today. He is a first-year law student and taking his contracts exam. And so he will be doing that and watching this on the Webcast.

I would also like to acknowledge my law partner, Amy Newsom, who traveled with me from Baton Rouge to be supportive; and watching on Webcast, all the members of my law firm, Forrester, Dick & Clark, without whose support I would not be here, and I

would not have been able to be the kind of lawyer that I have always aspired to be.

Thank you.

[The biographical information of Ms. Dick follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Rachelle "Shelly" Lynne Deckert Dick  
Maiden name: Rachelle Lynne Deckert

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Middle District of Louisiana

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Law Offices of Shelly D. Dick, LLC  
d/b/a Forrester, Dick & Clark  
4981 Bluebonnet Boulevard  
Baton Rouge, Louisiana 70809

4. **Birthplace:** State year and place of birth.

1960; El Paso, Texas

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1985 – 1988, Louisiana State University Paul M. Hebert Law Center; J.D., 1988  
1980 – 1981, University of Texas at Austin; B.B.A. (*cum laude*), 1981  
1978 – 1980, North Texas State University; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1994 – Present  
Law Offices of Shelly D. Dick, LLC  
d/b/a Forrester, Dick & Clark (f/k/a Forrester & Dick; Forrester, Jordan & Dick)

4981 Bluebonnet Boulevard  
Baton Rouge, Louisiana 70809  
Partner

2008 – Present  
Louisiana Workforce Commission  
Post Office Box 94040  
Baton Rouge, Louisiana 70804  
*Ad Hoc* Hearing Officer

1988 – 1994  
Gary Field Landry and Dornier  
8555 United Plaza Boulevard  
Baton Rouge, Louisiana 70809  
Associate (1988 – 1994)  
Law Clerk (1988)

1987 – 1988  
Kean Miller, LLP  
400 Convention Street, Suite 700  
Baton Rouge, Louisiana 70802  
Law Clerk

1986 – 1987  
18th Judicial District Court of Louisiana  
850 Eighth Street  
Plaquemine, Louisiana 70767  
Law Clerk to the Honorable Judge Catherine “Kitty” Kimball

1982 – 1985  
The Dow Chemical Company  
4150 South Sherwood Forrest Boulevard  
Baton Rouge, Louisiana 70816  
Outside Sales

Other Affiliations (uncompensated):

2011 – Present  
Grace George, LLC (no profits generated)  
2051 Silverside Drive, Suite 110  
Baton Rouge, Louisiana 70808  
Member

2002 – Present  
Lamp Ladies, LLC (no profits generated)  
5535 Montrose Avenue

Baton Rouge, Louisiana, 70806  
 Member (2002 – present)  
 Member, Lamp Ladies d/b/a “Frockz” (2008 – present)

2002 – Present  
 First United Methodist Church  
 930 North Boulevard  
 Baton Rouge, Louisiana 70801  
 Member, Administrative Board (2002 – present)  
 Member, Board of Trustees (2012 – present)

2011  
 iHope Baton Rouge, a Freedom School affiliate  
 3852 East Brookstown Drive  
 Baton Rouge, Louisiana 70805  
 Founding Member and Member, Board of Directors

1998 – 2001  
 Greater Baton Rouge Federation of Churches and Synagogues  
 (now known as Interfaith Federation of Greater Baton Rouge)  
 3112 Convention Street  
 Baton Rouge, Louisiana 70806  
 Board Member (est. 1998 – 2001)  
 President (est. 2000)

1997 – 1999  
 The Early Learning Center, Child Development and Guidance Center  
 930 North Boulevard  
 Baton Rouge, Louisiana 70801  
 Board Member (1997 – 1999)  
 President (1999)

1989 – 1996  
 Young Women’s Christian Association of Baton Rouge  
 8281 Goodwood Boulevard, Suite B1  
 Baton Rouge, Louisiana 70806  
 Board Member (est. 1989 – 1996)  
 Secretary-Treasurer (est. 1992)

1989 – 1994  
 Capital Area Family Violence Intervention Center  
 The Battered Women’s Center  
 3730 St. Gerard Street  
 Baton Rouge, Louisiana 70805  
 Board of Directors (est. 1989 – 1994)  
 President (est. 1993)

1991 – 1993  
Dean Henry George McMahon American Inns of Court  
777 Florida Boulevard  
Baton Rouge, Louisiana 70801  
Secretary-Treasurer

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military and was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Women of Excellence Award in the Field of Government & Law, Louisiana Legislative Women's Caucus (2012)  
University of Texas Dean's List (1980 – 1981)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association  
Association for Transportation Law, Logistics, and Policy  
Bar Association of the Fifth Federal Circuit  
Baton Rouge Association of Women Attorneys (est. 1996 – 1998)  
Baton Rouge Bar Association  
Chair, Mock Trial Committee (1992)  
Dean Henry George McMahon American Inns of Court  
Pupil (1993 – 1997)  
Secretary-Treasurer (1991 – 1993)  
Federal Bar Association  
Louisiana Association of Defense Counsel  
Louisiana State Bar Association  
National Association of Railroad Trial Counsel

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Louisiana, 1988



There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1994  
 United States Court of Appeals for the Fifth Circuit, 1990  
 United States District Court for the Eastern District of Louisiana, 1988  
 United States District Court for the Middle District of Louisiana, 1988  
 United States District Court for the Western District of Louisiana, 1988

There have been no lapses in membership.

#### 11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Baton Rouge Chamber of Commerce (1997 – 2001)  
 Boys & Girls Club of Greater Baton Rouge Host Committee for fundraiser and local art auction (2004)  
 Capital Area Family Violence Intervention Center (also known as The Battered Women's Center)  
     Member, Board of Directors (est. 1989 – 1994)  
     President (est. 1993)  
 Catholic High School Mother/Son Breakfast, Chair (2007)  
 Dunham School Mother's Brunch (1998)  
 Early Learning Center, Child Development and Guidance Center  
     Member, Board of Directors (1997 – 1999)  
     President (1999)  
 First United Methodist Church  
     Member, Administrative Board (2002 – Present)  
     Member, Board of Trustees (2012 – Present)  
     Member, Staff Parish Relations Committee (2008 – 2010)  
     Volunteer, United Methodist Youth Fellowship (2000 – Present)  
     Volunteer, Sunday School Teacher (1998 – Present)  
     Chair, The Future is Now Capital Campaign (2010 – 2011)  
     Member Missions Committee (2011 – Present)

Greater Baton Rouge Federation of Churches and Synagogues (now known as Interfaith Federation of Greater Baton Rouge)

Member, Board of Directors (est. 1998 – 2001)

President (est. 2000)

The Holy Grill Volunteer (1994 – 1998)

Member, Sustained Dialogue on Race (est. 1998 – 2000)

iHope Baton Rouge, a Freedom School affiliate

Founding Member and Member, Board of Directors (2011)

Junior League of Baton Rouge (1986 – 1991)

Volunteer Baton Rouge! Marketing Committee (1990 – 1992)

Leadership Baton Rouge (1994)

Louisiana Resource Center for Educators, Fund Raising Committee (2005)

Sunrise Rotary Club Member (1996 – 1999)

Young Women's Christian Association of Baton Rouge

Member, Board of Directors (est. 1989 – 1996)

Secretary-Treasurer (est. 1992)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Until recently, the national YWCA limited full voting membership to women. The Junior League limits membership to women. Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

## 12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*"Resource" Program Opposed*, The Advocate, Feb. 16, 1996. Copy supplied.

*The Final Stages of Trial and Entry of Judgment*, in Louisiana Civil Litigation Series, published by American Inns of Court – Lawyers' Cooperative Publishing (1996). Copy supplied.

*City Club: Vestige of Separation*. The Advocate, July 6, 1994. Copy supplied.

Ford v. Wainwright: *Warning – Sanity on Death Row May be Hazardous to Your Health*. La. L. Rev., July 1987. Copy supplied.

2009 – 2011, I maintained a Twitter page to promote Frockz. Copy supplied.

April 28, 2010, Comment on a SimplyStated post. Copy supplied.

September 5, 2009, Comment on Yahoo post. Copy supplied.

Profile on BASK Designs web site available at <http://www.baskdesign.net/page6>.

Profile on Grace George web site available at  
<http://www.gracegeorge.com/Articles.asp?ID=1>.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

July 27, 2011: Moderator, "Best Practices Handling Worker's Compensation Claims," Southern Association of Workers' Compensation Administrators, Baton Rouge, Louisiana. I moderated a panel discussion among large self-insured employers regarding best practices for handling worker's compensation claims. I

have no notes, transcript or recording. The Southern Association of Workers' Compensation Administrators can be contacted through Gary Davis, P.O. Box 910373, Lexington, Kentucky 40591.

June 17, 2011: Speaker, Adjusting Casualty Claims in Louisiana, presented to Liberty International Underwriters, New York, New York. Presentation supplied.

March 2002: Speaker, Evidence Review, Continuing Legal Education, Baton Rouge, Louisiana. Outline supplied.

2002 (est.): Lecture, Risk Management, presented to Risk & Security Departments, Paragon Casinos Resort, Marksville, Louisiana. I provided an instructional lecture to security officers, first responders, and other employees regarding report writing and critical factual investigations of work place injuries and incidents involving casino employees and patrons. I have no notes, transcript or recording. The address of the Paragon Casino Resort is 711 Paragon Place, Marksville, Louisiana 71351.

2000: Speaker, Employment Law, National Business Institute Seminar, Baton Rouge, Louisiana. Outline supplied.

December 1999: Speaker, Young Women's Christian Association Annual Meeting, Baton Rouge, Louisiana. Remarks supplied.

December 1998: Lecture, The Management of Nonprofit Organizations, Southern University, School of Public Policy & Urban Affairs, Baton Rouge, Louisiana. I have no notes, transcript or materials. The address of Southern University is Leon G. Netterville Drive, J.S. Clark Administration Building, 1st Floor, Room 118, Baton Rouge, Louisiana 70813.

October 1998: Lecture, Legal Forms of Business, Baton Rouge Chamber of Commerce Southern Council of Retired Executives, Baton Rouge, Louisiana. Outline supplied.

March 1998: Speaker, Law Practice Management, Baton Rouge Bench Bar Conference, Continuing Legal Education, Baton Rouge, Louisiana. Outline supplied.

1996 (est.): Speaker, Jurisdiction of Native American Tribal Courts, The American Inns of Court of Alexandria and Pineville, Louisiana. I gave a lecture to members of the American Inns of Court regarding developments in Native American Law and Tribal Sovereign Immunity and Subject Matter Jurisdiction of Tribal Courts. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Jordan Blum, *BR Lawyer Tapped for U.S. Judgeship*, The Advocate, Apr. 25, 2012. Copy supplied.

Kiran Chawla, *President Obama Nominates BR Attorney as U.S. Dist. Judge*, WAFB 9 News, Apr. 25, 2012. Video and corresponding article available at <http://www.wafb.com/story/17760438/president-obama-nominates-br-attorney-as-us-dist-judge>.

Interview with Women's Fund of El Paso, Jan. 30, 2010. Copy supplied.

Jeff Schnaufer, *The Great Cover-Up*, Content That Works, Aug. 12, 2009 (reprinted in multiple outlets). Copy supplied.

Maria Cortés González, *Bright Idea: El Paso Duo's Lampshade Slipcovers Pop at Home Show*, El Paso Times, June 18, 2009. Copy supplied.

*Lampshade Fashion with Slipcovers*, HomeWorkshop.com, Apr. 2, 2009. Copy supplied.

Karen Martin, *Revamp Your Lamp*, The Advocate, Mar. 31, 2009. Copy supplied.

David A. Keep, *The Scout: The Fix*, Los Angeles Times, Mar. 7, 2009. Copy supplied.

Hali Bernstein Saylor, *Fun, Fabulous, Frockz*, Las Vegas Review-Journal, Mar. 5, 2009. Copy supplied.

Lauren Hannan, *Attorney Spotlight: Interview with Shelly Dick*, Around the Bar (Baton Rouge Bar Association), Sept. 2008. Copy supplied.

Rebecca Breeden, *A Bright Idea*, 225BatonRouge.com, Aug. 29, 2008. Copy supplied.

Mariana Greene, *Finds: A Bit of Lift for Your Lampshade*, Dallas Morning News, Aug. 1, 2008. Copy supplied.

Penny Brown Rogers, *Businessman: Justice Showed Favoritism*, The Advocate, Oct. 11, 2005. Copy supplied.

*ULM Official Files Two New Suits over Truth at ULM Web Site*, Associated Press, May 8, 2002 (reprinted in multiple outlets). Copy supplied.

*Women's Balancing Act*, Around the Bar (Baton Rouge Bar Association). Apr. 2001. Copy supplied.

Ted Griggs and Tom Guarisco, *Developer: Traffic Not Issue*, The Advocate, Mar. 2, 1996. Copy supplied.

Glenn P. Marcel, "Bar Spotlight: Getting to Know You," Around the Bar (Baton Rouge Bar Association), 1993. Copy supplied.

Melinda Shelton, *Volunteer Baton Rouge! Pairs People, Agencies*, The Advocate, Apr. 23, 1990. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by the Louisiana Workforce Commission to serve as an *ad hoc* Administrative Hearing Officer in the following:

2011 – Present: *Ad Hoc* Hearing Officer presiding over disputes brought by Randolph Sheppard blind managers against the State Licensing Authority

2008 – Present: *Ad Hoc* Hearing Officer presiding over Health Care Provider litigation instituted in Louisiana Office of Worker's Compensation Administrative Courts

April 2010 – *Ad Hoc* Hearing Officer presiding over dispute of Filipino teachers against Universal Placement International

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 10 to 12 trials.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

*Louisiana Federation of Teachers v. Universal Placement International*, Louisiana Workforce Commission (Apr. 14, 2010), *aff'd*, *Louisiana Federation of*

*Teachers v. Universal Placement International*, No. 590, 409, 19th Judicial District Court, State of Louisiana, December 30, 2010.

*Camardelle, et al. v. Louisiana Workforce Commission and Louisiana Rehabilitation Services*, 335-061,004, Louisiana Workforce Commission (May 1, 2012).

*Lake Charles Memorial Hospital v. Angelle Concrete Group, LLC and The Gray Insurance Company*, No. 05-00367, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Oct. 6, 2009).

*Lake Charles Memorial Hospital v. Hobby Lobby Stores, Inc.*, Suit No. 05-01208, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Oct. 7, 2009).

*Lake Charles Memorial Hospital v. Haynes Pulpwood*, Suit No. 05-01213, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Oct. 8, 2009).

*Lake Charles Memorial Hospital v. Hobby Lobby Stores-Risk Management*, Suit No. 05-01207, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Oct. 15, 2009).

*Lake Charles Memorial Hospital v. Al Copeland Investments*, Suit No. 05-01593, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 17, 2009).

*Lake Charles Memorial Hospital v. Al Copeland Investments*, Suit No. 05-01205, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 17, 2009).

*Bernauer Clinic v. Diocese of Baton Rouge and Frank Gates Service Co.*, Suit No. 04-07636, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Oct. 19, 2009).

*In Re: Shamieh v. Ace Property & Casualty Insurance Co., et al.*, Consolidated Action Nos. 05-01870, 05-01877, 05-01879, 05-01883, 05-019093, 05-019006, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Mar. 4, 2010).

*Bernauer Clinic v. The Travelers and Louisiana Machinery Company*, Suit No. 04-07640, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (May 20, 2010).

*Lafayette General Medical Center v. Family Dollar Stores of Louisiana, Inc.*, Suit No. 08-21148, Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (June 1, 2010).

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

(1) *Louisiana Federation of Teachers v. Universal Placement International*, Louisiana Workforce Commission (Apr. 14, 2010), *aff'd*, *Louisiana Federation of Teachers v. Universal Placement, International*, No. 590, 409, 19th Judicial District Court, State of Louisiana, December 30, 2010. Opinion supplied.

The Secretary of the Louisiana Workforce Commission appointed me to serve as a hearing officer to hear evidence regarding the Complaint of the Louisiana Federation of Teachers and the American Federation of Teachers on behalf of certain Filipino teachers brought pursuant to the Louisiana Private Employment Service Law, La. R.S. 23:101 et seq. Plaintiffs alleged that Respondent Universal Placement International ("UPI") violated the Louisiana Private Employment Service Law which provides: "[n]o person, company, corporation, or partnership shall operate, solicit, or advertise an employment service in this state unless licensed by the assistant secretary." The teachers' unions alleged that because UPI was not a Louisiana licensed employment, the placement contracts between UPI and the individual teachers were void *ab initio*. The teachers sought an order compelling UPI to refund placement fees it collected from Filipino teachers. Plaintiffs also sought the imposition of statutory fines, penalties and attorneys' fees against UPI. After an evidentiary hearing, I ruled in favor of the plaintiffs, finding that UPI violated Louisiana Law, and ordered that the defendant refund placement fees paid by the teachers. My administrative determination was sustained by the Honorable Janice Clark, Judge, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

Plaintiffs were represented by Dan McNeil, American Federation of Teachers, Legal Department, 555 New Jersey Avenue, NW, Washington, DC 20001, 202-393-6305; Larry Samuel, Rittenberg, Samuel & Phillips, LLC, 715 Girod Street, Suite 100, New Orleans, LA 70130, 504-524-5555; and Jerold Edward Knoll, The Knoll Law Firm, Post Office Box 426, Marksville, LA 71351, 318-253-6200. Defendant was represented by Murphy Foster, Breazeale, Sachse & Wilson, LLP, One American Place, Suite 2300, 301 Main Street, Baton Rouge, LA 70821, 225-387-4000.

(2) *Camardelle, et al. v. Louisiana Workforce Commission and Louisiana Rehabilitation Services*, No. 335-061.004, Louisiana Workforce Commission (May 1, 2012). Opinion supplied.



I presided over claims brought by Randolph Sheppard licensed blind vendors and the Elected Committee of Blind Vendors against the Louisiana Workforce Commission and Louisiana Rehabilitation Services, Inc., the Randolph Sheppard's state licensing authority. Plaintiffs alleged that the state licensing agency violated the Randolph Sheppard Act (20 U.S.C. § 107) by failing to permit "active participation" by the Elected Committee of Blind Vendors in the selection and appointment of licensed managers to vending/cafeteria management vacancies. The case was tried on February 6 and 7, 2012. I concluded that the Elected Committee of Blind Vendors was given the opportunity to actively participate in the selection process for the subject vending vacancy. I found that as a matter of fact, the State Licensing Authority referred the eligible applicant for the subject vacancy to a selection sub-committee of Elected Committee of Blind Vendors for review and consideration on 2 occasions. The selection committee refused to participate in the process. Based on these facts, I concluded that the active participation required under the Act was provided but was refused by the Committee. Judgment was entered denying the grievance and in favor of the state licensing authority.

Plaintiffs were represented by Robert R. Humphreys, Attorney at Law, 1777 Ala Moana Boulevard, Suite 1204, Honolulu, HI 96815, 808-441-6824. Defendants were represented by Mary Ann M. White, Shows, Cali, Berthelot & Walsh, LLP, 628 Saint Louis Street, Baton Rouge, LA 70802, 225-346-1461.

(3) *In Re: Shamieh v. Ace Property & Casualty Insurance Co., et al.*, Consolidated Actions Nos. 05-01870, 05-01877, 05-01879, 05-01883, 05-019093, 05-019006, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Apr. 13, 2010). Opinion supplied.

I was engaged by the Office of Worker's Compensation to preside over suits filed by health care providers against employers and insurers seeking payment, penalties, and attorneys' fees for alleged underpayment for services rendered to injured workers. The plaintiff health care provider in these consolidated actions alleged that the defendant unlawfully took Preferred Provider Organization (PPO) discounts which the health care providers contend was in violation of Title 23 of Louisiana Revised Statutes. The health care providers maintained that the Louisiana Worker's Compensation medical reimbursement schedule was a minimum reimbursement schedule and that any further discounting pursuant to PPO contracts was unlawful. I found that the defendant failed to prove the existence of any PPO contract or other agreement whereby the plaintiff health care provider had agreed to accept reimbursement at a rate less than the billed rate or less than the published reimbursement fee schedule rate. I found that the defendant insurers had not reasonably controverted the plaintiff's claim for reimbursement and assessed a statutory penalty and attorneys' fees under La. R.S. 23:1210.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Mark L. Clark, Brown, Sims, PC, 650 Poydras Street, Suite 2200 New Orleans, LA 70130, 504-569-1007.

(4) *Lake Charles Memorial Hospital v. Hobby Lobby Stores, Inc.*, Suit No. 05-01208, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 16, 2009). Opinion supplied.

In these consolidated matters, the plaintiff health care provider alleged that it was not reimbursed for medical services rendered to injured workers in accordance with the medical fee schedule applicable in Worker's Compensation cases, La. R.S. 23:1034.2. The defendant employer asserted as a defense that medical payments were remitted pursuant to the payment terms of its PPO contract with the plaintiff medical providers.

I found that the defendant employer made a *prima facie* showing of a defense to the plaintiff's claim of underpayment by establishing the existence of a PPO contract between the employer and the plaintiff health care provider that provided for capitated reimbursement rates. I declined to interpret the PPO contract to determine whether reimbursement was made in accordance therewith, finding that the Office of Worker's Compensation court lacked jurisdiction to interpret and/or enforce the terms and conditions of PPO agreements. I concluded that any claims asserted by the plaintiff medical provider that the parties' performance under the agreements are in violation or conflict with the "Any Willing Provider Act," La. R.S. 40:2201 *et seq.*, were beyond the jurisdiction of the OWC. The plaintiff's claims for penalties and attorneys' fees were denied because the defendant reasonably controverted the claim for underpayment.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by John V. Quaglino, Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley, 3320 Esplanade Avenue North, Metairie, LA 70002, 504-831-7270.

(5) *Lake Charles Memorial Hospital v. Al Copeland Investments*, Suit No. 05-01593, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 17, 2009).

This was a suit by health care providers against an employer seeking compensation, penalties, and attorneys' fees for alleged underpayment for medical services rendered to injured workers. I found that the employer failed to make a *prima facie* showing of any contractual right or agreement to make reduced reimbursements for medical services rendered. Judgment was entered for the plaintiff.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Eric J. Waltner, Allen & Gooch, 2000 Kaliste Saloom Road, Suite 400, Lafayette, LA 70508, 337-291-1400.

(6) *Lake Charles Memorial Hospital v. Al Copeland Investments*, Suit No. 05-01205, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 17, 2009).

This was a suit by health care providers against an employer seeking compensation, penalties, and attorneys' fees for alleged underpayment for medical services rendered to injured workers. I found that the employer failed to make a *prima facie* showing of any contractual right or agreement to make reduced reimbursements for medical services rendered. Judgment was entered for the plaintiff.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Eric J. Waltner, Allen & Gooch, 2000 Kaliste Saloom Road, Suite 400, Lafayette, LA 70508, 337-291-1400.

(7) *Lake Charles Memorial Hospital v. Banks*, No. 05-01381, District 3, Office of Worker's Compensation, Lake Charles, Louisiana (May 20, 2009). Opinion supplied.

On summary judgment, I ruled that the Louisiana Worker's Compensation Court had subject matter jurisdiction over the health care provider's reimbursement claims for medical services provided to injured workers but lacked subject matter jurisdiction to interpret and/or enforce PPO provider agreements. I further ruled that a health care provider can agree, by contract or otherwise, to accept reimbursement for medical care services at a rate less than the reimbursement rate established by the Louisiana Medical Reimbursement Schedule. The Louisiana Supreme Court subsequently followed the same rationale in *Agilus Health v. Accor Lodging North America*, 52 So. 3d 68, 2010-0800 (La. Nov. 30, 2010). Since the Louisiana Supreme Court's ruling in *Agilus*, the parties have negotiated resolutions in the majority of the remaining PPO cases.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by John V. Quaglino, Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley, 3320 Esplanade Avenue North, Metairie, LA 70002, 504-831-7270.

(8) *Bernauer Clinic v. Diocese of Baton Rouge and Frank Gates Service Co.*, Suit No. 04-07636, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Dec. 7, 2009). Opinion supplied.

The plaintiff physician alleged that he was not reimbursed for medical services rendered to injured workers of the defendant Diocese in accordance with the medical fee schedule applicable in Worker's Compensation cases. La. R.S. 23:1034.2. The defendant employer asserted as a defense that medical payments were remitted pursuant to a PPO contract with the doctor. I held that the defendant failed to prove the existence of any agreement by the doctor to accept a capitated or reduced reimbursement from the defendant. Accordingly, judgment was entered in favor of the plaintiff and a statutory penalty and attorneys' fees were assessed.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Wayne Fontana, Fontana & Seelman, LLP, 1010 Common Street, Suite 2300, New Orleans, LA 70112, 504-680-0156.

(9) *Bernaier Clinic v. The Travelers and Louisiana Machinery Company*, Suit No. 04-07640, Louisiana Office of Worker's Compensation, District 3, Lake Charles, Louisiana (May 20, 2010). Opinion supplied.

The plaintiff physician alleged that he was not reimbursed for medical services rendered to injured workers of the defendant employer. The defendant insurer demonstrated that it had a PPO agreement with the plaintiff which provided for a specified negotiated reimbursement rate. Plaintiff maintained that the employer was not a party to the PPO contract and therefore the lower negotiated reimbursement could not be taken on behalf of the employer when the plaintiff doctor treated the employer's injured workers.

I rejected the plaintiff's claims, finding that the employer and its worker's compensation insurer were each obligated for the same debt, namely, to provide worker's compensation medical benefits to injured employees of the employer. Under Louisiana Civil Code article 1794, "an obligation is solidary for the obligors when each obligor is liable for the whole performance [and] performance by one solidary obligor extinguishes the obligation for the other." Furthermore, under the Worker's Compensation Act the employer's duty is to provide comp benefits to its injured employees. The employer is under no duty to act vis-a-vis the health care provider except to reimburse the provider according to the reimbursement schedule – unless the provider has agreed to accept reimbursement at a lower rate, as in this case. The employer's obligation to reimburse for medical services was satisfied when its insurer paid the doctor in accordance with its negotiated agreement with the doctor.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Jade C. Mckcough, Blue Williams, 3421 North Causeway Boulevard, 9th Floor, Metairie, LA 70002, 504-831-4091.

(10) *Lafayette General Medical Center v. Family Dollar Stores of Louisiana, Inc.*, Suit No. 08-21148, Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (June 22, 2010). Opinion supplied.

Through an attenuated chain of contracts, the defendant employer contended that it was entitled to take a PPO discount and reimburse the plaintiff health care provider for less than its billed fee schedule charges for medical services provided to injured employees of the defendant. I found that the defendant failed to prove the existence of any agreement with the health care provider that permitted the employer to remit a capitated or reduced reimbursement. Accordingly, judgment was entered in favor of the plaintiff and a statutory penalty and attorneys' fees were assessed.

Plaintiff was represented by Lawrence C. Billeaud, 321 West Main Street, Suite 1-B, Lafayette, LA 70501, 337-266-2055. Defendant was represented by Jennifer Cortes Poirier, Truitt Law Firm, 251 Highway 21, Madisonville, LA 70447, 985-327-5266.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

(1) *Louisiana Federation of Teachers v. Universal Placement, International*, Louisiana Workforce Commission (Apr. 14, 2010), *aff'd*, *Louisiana Federation of Teachers v. Universal Placement International*, No. 590, 409, 19th Judicial District Court, State of Louisiana, December 30, 2010. Opinion supplied in response to 13(c).

Plaintiffs were represented by Dan McNeil, American Federation of Teachers, Legal Department, 555 New Jersey Avenue, NW, Washington, DC 20001, 202-393-6305; Larry Samuel, Rittenberg, Samuel & Phillips, LLC, 715 Girod Street, Suite 100, New Orleans, LA 70130, 504-524-5555; and Jerold Edward Knoll, The Knoll Law Firm, Post Office Box 426, Marksville, LA 71351, 318-253-6200. Defendant was represented by Murphy Foster, Breazeale, Sachse & Wilson, LLP, One American Place, Suite 2300, 301 Main Street, Baton Rouge, LA 70821, 225-387-4000.

(2) *Camardelle, et al. v. Louisiana Workforce Commission and Louisiana Rehabilitation Services*, No. 335-061.004, Louisiana Workforce Commission (May 1, 2012). Opinion supplied in response to 13(c).

Plaintiffs were represented by Robert R. Humphreys, Attorney at Law, 1777 Ala Moana Boulevard, Suite 1204, Honolulu, HI 96815, 808-441-6824. Defendants were represented by Mary Ann M. White, Shows, Cali, Berthelot & Walsh, LLP, 628 Saint Louis Street, Baton Rouge, LA 70802, 225-346-1461.

(3) *In Re: Shamieh v. Ace Property & Casualty Insurance Co., et al.*, Consolidated Actions Nos. 05-01870, 05-01877, 05-01879, 05-01883, 05-019093, 05-019006, Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Apr. 13, 2010). Opinion supplied in response to 13(c).

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Mark L. Clark, Brown, Sims, PC, 650 Poydras Street, Suite 2200, New Orleans, LA 70130, 504-569-1007.

(4) *Lake Charles Memorial Hospital v. Hobby Lobby Stores, Inc.*, Consolidated Suit No. 05-01207, 05-01208, and 05-01592 Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Nov. 16, 2009). Opinion supplied in response to 13(c).

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by John V. Quaglino, Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley, 3320 Esplanade Avenue North, Metairie, LA 70002, 504-831-7270.

(5) *Lake Charles Memorial Hospital v. Superior Energy Services, Inc., et al.*, Suit No. 08-01602, Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Jan. 26, 2009). Opinion supplied.

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Eric J. Waltner, Allen & Gooch, P.O. Box 3768, Lafayette, LA 70502, 337-291-1000.

(6) *Lafayette Bone and Joint Clinic v. Worknet 2000, Inc. et al.*, Suit No. 06-08525, Office of Worker's Compensation, District 4, Lafayette, Louisiana (Jan. 26, 2009). Opinion supplied.

Plaintiffs were represented by Lawrence C. Billeaud, 321 West Main Street, Suite 1-B, Lafayette, LA 70501, 337-266-2055. Defendants were represented by Eric J. Waltner, Allen & Gooch, P.O. Box 3768, Lafayette, LA 70502, 337-291-1000.

(7) *Lake Charles Memorial Hospital v. Banks*, No. 05-01381, Office of Worker's Compensation, District 3, Lake Charles, Louisiana (May 20, 2009). Opinion supplied in response to 13(c).

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by John V. Quaglino, Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley, 3320 Esplanade Avenue North, Metairie, LA 70002, 504-831-7270.

(8) *Bernauer Clinic v. Diocese of Baton Rouge and Frank Gates Service Co.*, Suit No. 04-07636, Office of Worker's Compensation, District 3, Lake Charles, Louisiana (Dec. 7, 2009). Opinion supplied in response to 13(c).

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Wayne Fontana, Fontana & Seelman, LLP, 1010 Common Street, Suite 2300, New Orleans, LA 70112, 504-680-0156.

(9) *Bernauer Clinic v. The Travelers and Louisiana Machinery Company*, Suit No. 04-07640, Office of Worker's Compensation, District 3, Lake Charles, Louisiana (May 20, 2010). Opinion supplied in response to 13(c).

Plaintiffs were represented by Thomas A. Filo, Cox, Cox, Filo & Camel, 723 Broad Street, Lake Charles, LA 70607, 337-436-6611. Defendants were represented by Jade C. McKeough, Blue Williams, 3421 North Causeway Boulevard, 9th Floor, Metairie, LA 70002, 504-831-4091.

(10) *Lafayette General Medical Center v. Family Dollar Stores of Louisiana, Inc.*, Suit No. 08-21148, Office of Worker's Compensation, District 4, Lafayette, Louisiana (June 22, 2010). Opinion supplied in response to 13(c).

Plaintiff was represented by Lawrence C. Billeaud, 321 West Main Street, Suite 1-B, Lafayette, LA 70501, 337-266-2055. Defendant was represented by Jennifer Cortes Poirier, Truitt Law Firm, 251 Highway 21, Madisonville, LA 70447, 985-327-5266.

- e. Provide a list of all cases in which certiorari was requested or granted.

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All opinions rendered are unpublished.

Workforce Commission Administrative Opinions and Rulings are maintained by The Louisiana Workforce Commission, 1001 North 23rd Street, Baton Rouge, LA 70802.

Worker's Compensation Court Opinions and Rulings are maintained by The Office of Workers' Compensation, District 3, 4250 Fifth Avenue, Suite 3, Lake Charles, LA 70607, and The Office of Workers' Compensation, District 4, 556 Jefferson Street, First Floor, Lafayette, LA 70501.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In all matters in which I have served as an Administrative Hearing Officer, I have provided full disclosure to the litigants of the nature of my law practice, the areas of law in which I practice and a description of the types of clients I represent. Following disclosure, the parties are provided a specified period of time to file a Motion to Recuse. To date, I have never been the subject of a recusal motion.



15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Volunteer, Contributor and Agent for Service of Process, Campaign to Elect Catherine "Kitty" Kimball, Justice, Louisiana Supreme Court (1992 and 2002).

Host, Meet the Candidate, Congressman Bill Cassidy, Baton Rouge, Louisiana (2008).

Host, Meet the Candidate, Trey Ourso, candidate for Louisiana House of Representatives, Baton Rouge, Louisiana (est. 1993).

Sponsor, Tunica-Biloxi Indians TRIPAC annual golf tournament, Marksville, Louisiana (1998 – Present).

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk:

From 1986 to 1987, I served as a law clerk to the Honorable Judge Catherine "Kitty" Kimball, 18th Judicial District Court of Louisiana.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

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Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

For the past 24 years, I have practiced principally civil litigation. I began practicing as an associate in the area of business and commercial litigation. Upon going into practice with two partners in 1994, I began doing more casualty defense litigation and began practicing in the area of worker's compensation defense and employment law, primarily representing employers. In 1995, I began representing the Tunica-Biloxi Indians, doing business as Paragon Casino Resort in all litigated matters, including casualty, worker's compensation, employment law, and business and construction litigation. In connection with my representation of the Tunica-Biloxi Indians, I became knowledgeable of and litigated issues

involving tribal sovereign immunity and the Indian Gaming Regulatory Act. In approximately 1999, my practice expanded to include representation of short line, passenger and Class I railroads, defending crossing claims, Federal Employers' Liability Act claims, and passenger claims. In 1996, I began representing various state agencies in various types of litigation including casualty and employment law. In 2008, I was asked to serve as an Administrative Law Judge by the Louisiana Workforce Commission in worker's compensation cases and other various cases and matters.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I have principally practiced in civil defense litigation since 1988. Since 1994, I have represented the insureds of various national insurance carriers in general casualty litigation and employer liability litigation. In 1996, I began representing state agencies in various litigation, including employment law. In the late 1990's, my practice also expanded to include railroad litigation, including passenger rail cases, railroad crossing cases and FELA cases. In 2008, I commenced presiding over administrative hearings for the Louisiana Workforce Commission and worker's compensation disputed claims by health care providers. In the course of my practice I have also represented plaintiffs in employment discrimination cases and personal injury cases.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually 100% of my practice has been litigation. With the exception of one criminal jury trial, in which I was appointed by Judge Polozola, United States District Court Middle District of Louisiana, to represent a defendant, I have practiced almost exclusively in civil litigation since 1988. I have appeared in various state and federal courts and administrative tribunals frequently.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 50% |
| 2. state courts of record:  | 20% |
| 3. other courts:            | 15% |
| 4. administrative agencies: | 15% |

- ii. Indicate the percentage of your practice in:

- |                          |       |
|--------------------------|-------|
| 1. civil proceedings:    | 99.5% |
| 2. criminal proceedings: | 0.5%  |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

To the best of my recollection, I have handled 10 jury trials in which I was chief counsel, one jury trial in which I was associate counsel, more than 20 bench trials in which I was chief or co-counsel, and more than 10 bench trials before administrative agencies in which I was chief or co-counsel.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 27% |
| 2. non-jury: | 73% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

(1) *Grace, et al. v. Morgan, et al.*, 805 F. Supp. 390 (M.D. La. 1993), *aff'd*, 8 F.3d 23 (5th Cir. 1994), *cert. denied*, No. 93-1220, 510 U.S. 1195 (1994). After we obtained a jury verdict in favor of the plaintiffs in this civil rights suit, the District Judge granted defendants a new trial and then entered summary judgment in favor of the defendants. The Fifth Circuit affirmed. I assisted in preparing a Petition for Writ of Certiorari to the United State Supreme Court seeking review of the lower court's vacating of the jury verdict, which was denied. Copy supplied.

(2) *Thinkstream, Inc., et al. v. Adams, et al.*, No. 5-844-D-M2 (M.D. La. 2006), *aff'd*, 251 Fed. Appx. 282 (5th Cir. 2007); *petition for cert. dismissed*, No. 07-1000, 553 U.S. 1050 (2008). In this civil rights case, the District Court granted 12(b)(6) dismissal of the plaintiff's 42 U.S.C. § 1983 claims against the State officials I represented, and the Fifth Circuit affirmed. The plaintiffs filed a Petition for Writ of Certiorari, which we opposed. The petition was subsequently voluntarily dismissed. Copy supplied.

(3) *O'Dwyer v. Nelson*, Civ. No. 06-7280 (E.D. La. 2007), *rev'd*, 310 Fed. Appx. 741 (5th Cir. 2009), *cert. denied*, No. 09-5714, 130 S. Ct. 494 (2009). Plaintiff filed a § 1983 civil rights action against my client and other state officials. The District Court denied a motion to dismiss urged on the grounds of qualified immunity. The Fifth Circuit reversed, and the plaintiff filed a Petition for Writ of Certiorari. I filed an opposition, and the petition was denied. Copy supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *Grace, et al. v. Morgan, et al.*, 805 F. Supp. 390 (M.D. La. 1993), *aff'd*, 8 F.3d 23 (5th Cir. 1994), *cert. denied*, No. 93-1220, 510 U.S. 1195 (1994); Honorable John V. Parker: 1990 – 1994.

I was co-counsel for the plaintiffs in a civil rights suit filed in the United States District Court for the Middle District of Louisiana. The plaintiffs were professors at North Eastern Louisiana University who brought suit under 42 U.S.C. § 1983 for violations of their First and Fourteenth Amendment rights to freedom of speech and petition. Plaintiffs, a University professor and instructor, initially filed suit in state court challenging the University's process for handling grievances. Upon conclusion of their state court suit, plaintiff Grace's instructor contract was not renewed and Professor Potts was constructively demoted by virtue of his teaching assignments. In this federal civil rights law suit, plaintiffs alleged that the University was retaliating against them for exercising their First Amendment right to petition and to speak on matters of public concern. A jury verdict was returned in favor of the plaintiffs. Subsequently, the Court granted a new trial and then granted summary judgment in favor of the defendants. 805 F. Supp. 390 (M.D. La. 1993), which was affirmed by the Fifth Circuit, 8 F.3d 23 (5th Cir. 1994). The United States Supreme Court denied writs. 510 U.S. 1195 (1994).

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(2) *Tunica-Biloxi Indians of Louisiana d/b/a Paragon Casino Resorts v. Pecot, et al.*, Suit No. 2002-0116, Tunica-Biloxi Tribal Court, Marksville, Louisiana, May 3, 2006; Honorable William Bennett: 2002 – 2006.

I represented the plaintiff, Tunica-Biloxi Indians of Louisiana, doing business as Paragon Casino Resort, in multiple suits brought against 18 contractors, subcontractors, material suppliers and designers in connection with design, construction and material defects related to the construction of a four-story hotel on the premises of Paragon Casino Resort, which was owned by the Tunica-Biloxi Indians and located on tribal trust lands. The design, material and construction deficiencies resulted in hazardous mold contamination, which in turn resulted in numerous personal injury and employee exposure claims that I also defended. The matter was litigated in multiple jurisdictions due to issues raised contesting the subject matter jurisdiction of the Tunica-Biloxi Tribal Court. Ultimately, the subject matter jurisdiction of the Tribal Court was affirmed and all claims against all defendants were settled for total damages exceeding \$8 million.

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(3) *LaBorde, et al. v. The Tunica-Biloxi Indians d/b/a Paragon Casino Resort*, Civil Action No. 2002-3740-B, consolidated with *Augustine, et al. v. New Horizons Kids Quest, IV*, Civil Action No. 2002-3996-A, *Augustine, et al. v. New Horizons Kids Quest, IV*, Civil Action No. 2002-3997-A, and *Blalock, et al. v. New Horizons Kids Quest, IV*, Civil Action No. 2002-3998-A, 12th Judicial District Court, Parish of Avoyelles, State of Louisiana. *On appeal, LaBorde v. Pecot*, 942 So. 2d 699 (La. App. 3 Cir. 11/2/06), writ granted and *aff'd*, 925 So. 2d 522 (La. 2006). *See also Bonnette v. Tunica-Biloxi Indians d/b/a Paragon Casino Resort*, 873 So. 2d 1 (La. App. 3 Cir. 2003) (related matter). Honorable William Bennett; 2002 – 2006.

I represented the defendants in multiple consolidated and related actions brought by numerous plaintiffs alleging personal injury liability of the Tunica-Biloxi Indians d/b/a Paragon Casino Resorts for toxic mold exposure arising from construction defects on the premises of Paragon Casino Resorts. Plaintiffs brought suit against the Tunica-Biloxi Indians, a federally recognized sovereign Native American nation, in Louisiana State Court. On behalf of the Tribe, we prevailed on an exception of subject matter jurisdiction based on sovereign immunity. Subsequently, plaintiffs sought to maintain a direct action against the Tribe's insurers in state court. The direct action against the insurers was opposed on the grounds that it was a collateral attack on tribal sovereign immunity. The insurers' liability, if any, was solely derivative and dependent upon acts and/or omissions allegedly committed by agents and/or employees of the Tribe. Tribal sovereign immunity was affirmed by the Louisiana Third Circuit Court of Appeal and the direct action against the insurers was dismissed by the Louisiana Third Circuit Court of Appeal and affirmed by the Louisiana Supreme Court. After resolving the jurisdictional issues, the plaintiffs' claims were settled.

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(4) *Thinkstream, Inc., et al. v. Adams, et al.*, No. 5-844-D-M2, 2006 U.S. Dist. LEXIS 66636 (M.D. La. Aug. 28, 2006); *aff'd*, 251 Fed. Appx. 282 (5th Cir. 2007); *petition for cert. dismissed*, 553 U.S. 1050 (2008); Honorable James J. Brady; 2005 – 2008.

I represented Louisiana Supreme Court Justice Catherine Kimball and Louisiana Supreme Court employee Andrieu in a suit brought by plaintiffs who alleged unconstitutional denial of liberty without due process and reputational injury pursuant to 42 U.S.C. § 1983. Plaintiffs' claims arose from their failure to procure a lucrative state contract placed for bid by a state commission charged with facilitating the development of the Integrated Criminal Justice Information System. Our motion to dismiss for failure to state a claim was granted, and the dismissal was affirmed on appeal by the Fifth Circuit.

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(5) *O'Dwyer v. Nelson*, Civ. No. 06-7280, 2007 U.S. Dist. LEXIS 65360 (E.D. La. Aug. 31, 2007), *rev'd*, 310 Fed. Appx. 741 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 494 (2009) (No. 09-5714); Honorable Ginger Berigan: 2007 – 2009.

I represented Louisiana Supreme Court Justice Catherine Kimball, who along with numerous other State defendants was sued by plaintiff alleging constitutional torts under 42 U.S.C. §§ 1983, 1985, and 1986. Plaintiff's claims arose from his arrest and incarceration for public intoxication, which occurred during a time of civil unrest experienced by the City of New Orleans following Hurricane Katrina. On behalf of Justice Kimball we filed a motion to dismiss the § 1983 claim on the grounds of qualified immunity, which was denied by the District Court. The Fifth Circuit reversed, dismissing the plaintiff's § 1983 claims on the grounds of qualified immunity. The United States Supreme Court denied the plaintiff's petition for certiorari.

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(6) *Courville v. NFI, et al.*, Civil No. 09-0136 (M.D. La.); Honorable Jay Zainey; 2008 -- Present.

I represent the plaintiff Courville and his wife and son. Mr. Courville was seriously and permanently injured when the car he was driving was struck head on by an 18-wheeler owned and operated by defendant National Freight, Inc. ("NFI"). At the time of the collision, the NFI truck was being operated by an NFI employee who was mentally and physically incapacitated by an overdose of injectable insulin. Federal motor carrier safety law disqualifies insulin dependent drivers from operating commercial motor vehicles interstate. On behalf of the plaintiffs, we contended that at the time of the collision the NFI driver was "intoxicated" by reason of insulin overdose, entitling plaintiffs to recover compensatory and punitive damages. District Judge Jay C. Zainey ruled that the question of the defendant driver's intoxication and resulting punitive damages under Louisiana Civil Code Article 2315.4 is a matter for the jury. The case was tried to a jury on April 16 -20, 2012. The jury returned a verdict in favor of the plaintiffs.

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(7) *St. Rita's Litigation*, 34th Judicial District, Parish of St. Bernard, State of Louisiana;  
Honorable Judge Frank F. Foil; 2006 – 2010.

I represented Kathleen Blanco, Governor of the State of Louisiana, in her official capacity in defense of third party claims filed in 32 lawsuits brought by the defendant owners of the St. Rita's nursing home, which flooded during Hurricane Katrina, resulting in the death of 35 nursing home residents. The defendants' third party demands against the Governor and other State officials alleged that the Governor failed to discharge and execute the Emergency Operations Plan, which the defendant nursing home operators allege resulted in their failure to evacuate, thereby resulting in the drowning deaths of the nursing home residents. After extensive litigation we prevailed on Exceptions of No Cause of Action, which resulted in dismissal of all claims against the Governor.

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(8) *Gremillion, et al. v. Kansas City Southern Railway Co., et al.*, Civil No. 2004-5970, 12th Judicial District Court, Parish of Avoyelles, State of Louisiana. Appeals of various pre-trial and evidentiary matters reported at *Gremillion et al. v. Kansas City Southern Railway Co.*, 945 So. 2d 819 (La. App. 3 Cir. 2006), writ granted and remanded to Court of Appeal, 951 So. 2d 1107, 2007-0222 (La. 3/23/07); on remand, 945 So. 2d 819 (La. App. 3 Cir. 2006). Honorable William J. Bennett; 2003 – 2009.

I represented Kansas City Southern Railway Company in a wrongful death lawsuit brought by the heirs of Ms. Gremillion. Her heirs alleged that her death was the result of Kansas City Southern's negligence in connection with a grade crossing accident. After

extensive litigation, much of which involved interpretation and application of the privilege provided by 23 U.S.C. § 409, a settlement between the parties was reached.

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(9) *Gaspard, et al. v. Kansas City Southern Railway Co., et al.*, Civil No. 2005-7441-A, 12th Judicial District Court, Parish of Avoyelles, State of Louisiana; Honorable Mark A. Jeansonne: 2005 – 2009.

I represented Kansas City Southern Railway Company in a wrongful death lawsuit brought by the parents of a minor in connection with a grade crossing accident. The case was consolidated with two other lawsuits arising out of the same crossing accident brought by an injured passenger and the parents of a deceased passenger. The plaintiffs alleged that Kansas City Southern's negligence resulted in the deaths and injuries. After extensive litigation, a settlement between the parties was reached. The evidence indicated

that the teenage driver was solely at fault for failing to yield and for intentionally trying to beat the train as it approached the crossing in full view of the motorist.

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(10) *Vendt v. Calegero, et al.*, Civil Action No. 06-447 (M.D. La. 2006); Honorable Ralph E. Tyson: 2006 – 2007.

I represented two Louisiana Supreme Court Justices, the Chief of the Louisiana Office Disciplinary Counsel and a state bar official in a suit seeking injunctive relief, filed by plaintiff who has been denied admission to practice law in Louisiana based on his failure to meet his burden of proving good moral character required for admission. Plaintiff alleged that the failure to admit him to the Louisiana Bar was a violation of due process. On behalf of the defendants we urged and briefed a motion to dismiss for lack of subject matter jurisdiction, pursuant to *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), which holds that “United States District Court is without authority to review final determinations of [a State Court of last resort] in judicial proceedings. Review of such

proceedings can be obtained only in [the Supreme Court of the United States].” The plaintiff subsequently voluntarily dismissed his suit.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a young lawyer, I assisted a man dying of AIDS in obtaining medical insurance. His health insurer wrongfully denied coverage, which he required for critical end of life care. The carrier denied coverage alleging fraud on the application. After litigating my client's rights under the policy pro bono, the health care insurer relented and agreed to cover the cost of medical treatment for the life-threatening medical condition to which my client ultimately succumbed.

From 1989 to 1994, while serving on the Baton Rouge Battered Women's Shelter Board, I provided advice and counsel to victims of family violence and clinic counselors and staff. In 2003 I, along with allied professionals, provided free estate planning services to elderly members of my faith community. From 1998 to 1999, I volunteered for the Chamber of Commerce Council of Retired Executives to provide free counseling to entrepreneurs and new business owners regarding legal considerations on running a small business. In 2010, I provided free assistance for Desire Street Ministries to form and establish the iHope Baton Rouge, a non-profit providing after-school tutoring and library assistance to at-risk children ages 6 to 14.

In 2002, I assisted a gentleman in obtaining defense and indemnity from his employer for a Title VII suit that was filed against him. My client was a blue collar hourly wage earner, who was named as the harasser in a Title VII sexual harassment suit. His employer attempted to deny him a defense on the grounds that the alleged acts were *ultra vires*. I was successful in demanding that the employer defend my client, a defense which he could have never afforded. The employer was ultimately able to resolve the case for a nuisance value and my client was exonerated from the plaintiff's allegations.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I anticipate receiving undetermined income from the sale of The Law Offices of Shelly D. Dick, d/b/a Forrester, Dick and Clark. In addition, I anticipate receiving contingency fee income from a recently litigated case.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I am co-owner of Grace George, LLC, a wholesale fashion jewelry design and manufacturing company. My business partner is responsible for the day to day management of the business. My obligation to the company is to design new jewelry pieces and attend wholesale trade shows approximately 10 business days per year. My design responsibility is an artistic endeavor that I plan to continue to pursue in my spare time.

I am co-owner of Lamp Ladies, LLC d/b/a Frockz, a wholesale lampshade slipcover business. My business partner and I are in the process of selling off existing inventory, retiring company debt and closing the business. I do not anticipate spending any significant time or resources on this enterprise in the future.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse from any case in which any member of my law firm appeared. While I would carefully review each case for any conflict or appearance of a conflict, I do not anticipate any other conflict if I am confirmed as a district judge.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would handle all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges and pertinent advisory opinions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Over the past fifteen years, I have handled or supervised attorneys in my law firm who have handled over 21 pro bono litigated matters, which we accepted on referral from the Baton Rouge Bar Association Pro Bono Project. I estimate that I have donated in excess of four hundred hours on pro bono matters accepted from the Baton Rouge Pro Bono Project.

In addition to the cases accepted from the local pro bono bar project, while serving as a Board Member and Officer for the Capital Area Family Violence Intervention Center (Battered Women's Shelter), I provided approximately 40-60 hours of advice and legal counsel to the agency and to victims of family violence and clinic counselors and staff. In 2003, along with allied professionals, I provided approximately 40-60 hours of free estate

planning services to elderly underprivileged members of my faith community. From 1998 to 1999, through a program initiated by the Chamber of Commerce Council of Retired Executives, I provided approximately 30-40 hours of free legal counseling to entrepreneurs and new business owners regarding legal considerations on running a small business. In 2010, I provided approximately 30-40 hours of free legal services to Desire Street Ministries to charter and establish the iHope Baton Rouge, a non-profit agency which provides after-school tutoring and education assistance to at-risk children ages 6 to 14.

In 2006, 2007 and 2009, I assisted Teresa Green, an elderly woman on a fixed income with leasehold issues, family law matters, and motor vehicle matters totaling 40-50 hours. From 2005 to 2007, I mentored an at-risk young girl. In the course of that mentoring relationship, I provided free legal assistance and counsel to various members of her family which I estimate totaled 40-50 hours.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On August 9, 2011, by written correspondence, I submitted my professional resume to Senator Mary Landrieu expressing my interest in being considered for possible recommendation to the President for nomination to the United States District Court for the Middle District of Louisiana. Sometime thereafter I was contacted by Senator Landrieu's Baton Rouge office and an interview was scheduled. On August 17, 2011, I was interviewed by a local staff member of Senator Mary Landrieu. On September 19, 2011, I met with and was interviewed by Senator Landrieu's vetting committee. I interviewed with Senator Landrieu on October 16, 2011. In December 2011, I was contacted by Senator Landrieu and advised that my name, along with two others, was being submitted to the White House for consideration.

I spoke with an attorney from the White House Counsel's Office in early January 2012. Since January 27, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 27, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 25, 2012, the President submitted my nomination to the Senate.



- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10\*  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C., app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Dick, Rachelle D.	2. Court or Organization USDC, Middle District Louisiana	3. Date of Report 04/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) US District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 04/25/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Amended <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 03/31/2012
7. Chambers or Office Address 4081 Blackburn Blvd Baton Rouge, La. 70809		
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member,	Law Offices of Shelly D. Dick, LLC
2. Member	Lamp Ladies LLC, d/b/a Truckz
3. Member	Grace George, LLC
4. Member	K & S Property Holdings LLC
5. Director	L Hope, LLC

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting Dick, Rachelle D.	Date of Report 04/25/2012
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**III. NON-INVESTMENT INCOME** • (Reporting individual and spouse; see pp. 17-24 of filing instructions.)
**A. Filer's Non-Investment Income**
☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	Law Offices of Shelly D. Dick	\$228,500.00
2. 2011	Law Offices of Shelly D. Dick	\$269,656.25
3. 2012	Law Offices of Shelly D. Dick	\$21,002.22
4.		

**B. Spouse's Non-Investment Income** • If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for bonuses.)
☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2011	Social Security Disability
2. 2011	Private Disability Insurance Benefits
3. 2012	Social Security Disability
4. 2012	Private Disability Insurance Benefits

**IV. REIMBURSEMENTS** • (transportation, lodging, food, entertainment;  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.				
2. exempt				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**

Page 3 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	04/25/2012

**V. GIFTS.** (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Standard Mortgage	Mortgage on Rental Property #1	M
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	04/25/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. M-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Rental Property #1 Baton Rouge, La	D	Rent	M	W	Exempt				
2. Alliance Bernstein Mod Growth 1993-1995 ALTA		None	J	T					
3. Baron Asset Fund Ret	A	Dividend	K	T					
4. ING Clarion Real Estate Portfolio	A	Dividend	K	T					
5. Dodge & Cox Income Fund	A	Dividend	K	T					
6. Fidelity VIP Contrafund Port Svc.	A	Dividend	K	T					
7. Fidelity VIP Mid Cap Port Svc.	A	Dividend	K	T					
8. Health Care Spdr (XLV)	A	Dividend	J	T					
9. Hugobon Royalty Trust	A	Dividend	L	T					
10. ING Fixed Account		None	L	T					
11. ING Global Resources	A	Dividend	K	T					
12. ING International Small Cap Fund	A	Dividend	K	T					
13. iShares Dow Jones Select Dividend Index Fund	A	Dividend	K	T					
14. Louisiana Principal Protection Fund	A	Int./Div.	J	T					
15. Mutual Global Discovery Fund	A	Dividend	K	T					
16. SPDR Gold Trust		None	J	T					
17. T. Rowe Price Capital Appreciation Fund	B	Dividend	K	T					

1. Income Gift Codes:  
(See Columns B1 and D24)  
A = \$1,000 or less  
F = \$50,001 - \$100,000  
J = \$15,001 or less  
N = \$250,001 - \$500,000  
P1 = \$25,000,001 - \$50,000,000  
Q = Appraisal  
U = Book Value

B = \$1,001 - \$2,500  
G = \$3,000,001 - \$1,000,000  
K = \$15,001 - \$50,000  
O = \$300,001 - \$1,000,000  
R = Cost (Real Estate Only)  
V = Other

C = \$2,501 - \$5,000  
H = \$1,000,001 - \$5,000,000  
L = \$50,001 - \$100,000  
P1 = \$1,000,001 - \$5,000,000  
P4 = More than \$50,000,000  
S = Assessment  
W = Estimated

D = \$5,001 - \$15,000  
H2 = More than \$5,000,000  
M = \$100,001 - \$250,000  
P2 = \$5,000,001 - \$25,000,000  
T = Cash Market

E = \$15,001 - \$50,000

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	04/25/2012

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-80 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets).  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. T. Rowe Price Spectrum International Fund	A	Dividend	J	T					
19. EQ/Common Stock Index Portfolio	A	Dividend	J	T					
20. EQ/Equity 500 Index Portfolio		None	K	T					
21. Regions Bank Cash Accounts	A	Interest	J	T					
22. Texas Rare Earth Resources Corp. Stock		None	J	T					
23. Law Offices of Shelly D. Dick		None	N	W					
24. K & S Dick Property Holdings LLC	F	Rent	M	W					
25. Lamp Ladies LLC		None	J	W					
26. Grace George LLC		None	J	W					

1. Income/Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 I = \$15,001 or less N = \$25,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C7 and D3)	J = \$15,000 or less N = \$25,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other	H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cash (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	04/25/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 7 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	01/25/2012

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of F.U.S.C. app. § 501 et. seq., F.U.S.C. § 7353, and Judicial Conference regulations.

Signature Rachelle Dick

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		4	601	Notes payable to banks-secured (auto)		24	822
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		530	197	Notes payable to relatives			
Unlisted securities - see schedule		568	146	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	025
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		546	310
Real estate owned - see schedule	1	040	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		55	323				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		574	157
				Net Worth	1	624	110
Total Assets	2	198	267	Total liabilities and net worth	2	198	267
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

Alliance Bernstein CollegeBound <i>fund</i>	
Age-Based: Moderate Growth 1993-1995	\$ 1,007
Baron Asset Fund	25,116
ING Clarion Real Estate Portfolio	43,244
Dodge & Cox Income Fund	26,280
EQ/Common Stock Index Portfolio	9,260
EQ/Equity 500 Index Portfolio	17,935
Fidelity VIP Contrafund Portfolio	36,845
Fidelity VIP Mid Cap Portfolio	31,975
Health Care SPDR	9,374
Hugoton Royalty Trust	5,184
ING Fixed Account	88,211
ING Global Resources Portfolio	39,445
ING International Small Cap Fund	23,283
iShares Dow Jones Select Dividend Index Fund	37,707
Louisiana Principal Protection Fund	11,141
Mutual Global Discovery Fund	20,543
SPDR Gold Trust	9,354
Texas Rare Earth Resources Corp. stock	15,290
T. Rowe Price Capital Appreciation Fund	70,124
T. Rowe Price Spectrum International Fund	8,879
Total Listed Securities	\$ 530,197

Unlisted Securities

Grace George, LLC	\$ 12,350
K & S Dick Property Holdings LLC	240,000
Law Offices of Shelly D. Dick LLC	335,796
Lamp Ladies LLC	(20,000)
Total Unlisted Securities	\$ 568,146

Real Estate Owned

Primary residence	\$ 650,000
Rental property	190,000
Undeveloped lot (20% interest)	200,000
Total Real Estate Owned	\$1,040,000

Real Estate Mortgages Payable

Primary residence	\$ 377,268
Rental property	169,042
Total Real Estate Mortgages Payable	\$ 546,310

AFFIDAVIT

I, Shelly Deckert Dick, do swear that the information  
provided in this statement is, to the best of my knowledge, true and accurate.

4.26.2012  
(DATE)

Shelly D Dick  
(NAME)

Amy E. Newsom  
(NOTARY)

Amy E. Newsom, Notary Public  
Bar Roll No. 30660  
Commissioned For EBR Parish  
Qualified To Act Statewide  
My Commission Is For Life



4981 Bluebonnet Boulevard • Baton Rouge, Louisiana 70809  
Telephone (225) 928-5400 • Facsimile (225) 928-7733

Direct Dial: (225) 448-5326  
[adick@forresterdick.com](mailto:adick@forresterdick.com)

January 7, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on May 3, 2012 to be United States District Judge for the Middle District of Louisiana. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

**Question 8.**

Named "Fellow" by Louisiana Bar Foundation (08/21/2012)

Recipient of Greater Baton Rouge Business Report 2012 Influential Women in Business Award (05/29/12)

**Question 12d.**

November 2, 2012: "U.S. District Court Presidential Nomination" Speaker at Avoyelles Parish Bar Association CLE. This CLE presentation consisted of a review of the Constitutional authority and the jurisprudence pertaining to the Article III judges. I have no notes, transcripts, or recordings. The Avoyelles Parish Bar Association is a local section of the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130.

September 22, 2012: "U.S. District Court Presidential Nomination" Speaker at District Meeting of Louisiana Federation of Business and Professional Women. The substance of this speech was the nomination and appointment process of Article III judges generally. I have no notes, transcripts, or recordings. The BPW Louisiana, P.O. Box 15131, Monroe, Louisiana 71207.

**Question 12e.**

*La. Judge Nominee Goes Before Panel*, The Advocate, December 13, 2012. Copy supplied.

January 7, 2013  
Page 2

*Vitter Removes Block on Judicial Nominee*, The Advocate, November 30, 2012. Copy supplied.

*Wait and See: Vitter Stalls Courts for November*, Dig Magazine, September 12, 2012. Copy supplied.

*Vitter Blocking Nominee*, The Advocate, June 6, 2012. Copy supplied.

*BR Lawyer Tapped for U.S. Judgeship*, The Advocate, April 26, 2012. Copy supplied.

*President Obama Nominates B.R. Attorney as U.S. Dist. Judge*, April 25, 2012. Copy supplied.

On April 25, 2012, I participated in an interview with WAFB. Video is available at <http://www.wafb.com/story/17760438/president-obama-nominates-br-attorney-as-us-dist-judge>.

**Question 13b.**

*Lafayette Surgical Specialty Hospital v. Louisiana Restaurant Association Self Insurers Fund*, Suit No. 09-05003, Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (July 1, 2012).

*Lafayette Surgical Specialty Hospital v. Office of Risk Management*, Suite No. 10-09003 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (August 14, 2012).

*Lafayette Surgical Specialty Hospital v. Guillotte Brother, Inc.*, Suit No. 10-06844 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (September 20, 2012).

*Lafayette Surgical Specialty Hospital v. ATT, Inc. and Sedgwick*, Suit No. 10-08962 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (September 20, 2012).

*Lafayette Surgical Specialty Hospital v. Cudd Pressure Control, Inc. and Broadspire*, Suit No. 10-06992 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (September 20, 2012).

*Lafayette Surgical Specialty Hospital v. Louisiana Home Builders' Association –SIF and B.P. Builders, Inc.*, Suit No. 10-09466 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (September 20, 2012).

*Lafayette General Medical Center v. Labor Ready Southeast, Inc.*, Suit No. 07-09586 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (October 4, 2012).

*Lafayette Surgical Specialty Hospital v. European Aerospace and Strategic Comp.*, Suit No. 09-04972 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (October 9, 2012).

January 7, 2013

Page 3

*Lafayette Surgical Specialty Hospital v. Breaux Brothers Enterprises, Inc. and Great American Insurance Company of New York*, Suit No. 10-09007 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (October 10, 2012).

*Lafayette Bone & Joint Clinic v. Jefferson Parish School Board*, Suit No. 11-02816 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (November 1, 2012).

*Lafayette General Medical Center, Inc. v. Federal Express Corporation*, Suit No. 09-07182 Louisiana Office of Worker's Compensation, District 4, Lafayette, Louisiana (November 20, 2012).

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Shelly D. Diek

Enclosures

cc: The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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**NEWS**

**La. judge nominee goes before panel**



Show caption

**BY JORDAN BLUM**  
Advocate Washington bureau  
December 13, 2012

**1 COMMENTS**

**WASHINGTON** — Federal judge nominee Shelly D. Dick, of Baton Rouge, sailed through her congressional hearing Wednesday, but she acknowledged she may not receive her official confirmation from the Senate until early next year.

The Senate Judiciary Committee heard testimony and quizzed Dick and three other judicial nominees during an expedited hearing held before the end of the year. Dick has bipartisan support from Sens. Mary Landrieu, D-La., and David Vitter, R-La.

Dick was nominated by President Barack Obama in April to become the first female judge in the federal Middle District of Louisiana, based in Baton Rouge, but she was initially blocked by Vitter, who was holding out hope that GOP presidential nominee Mitt Romney would defeat Obama. After Obama won re-election last month, Vitter quickly withdrew his block and said he backed Dick receiving a fast-tracked confirmation process.

"I feel really honored and privileged," Dick said after her hearing, where

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she was joined by her parents, husband, two of her sons and work colleagues. "I was really humbled by the support from Sens. Landrieu and Vitter."

Dick said that she does not "hold out a lot of hope" that she will be confirmed this month, understanding that Congress is busy working out the so-called "fiscal cliff."

"That Middle District is really backlogged," Dick said. "So it's important to get in there and get those cases moving so people can have their day in court."

Dick, 52, is a native of El Paso, Texas, who moved to Baton Rouge when she started LSU Law School in 1985.

She is a founding partner in Forrester & Dick, a Baton Rouge law firm specializing in litigation. A year ago, she was one of three possible nominees recommended to Obama by Landrieu to replace the late Chief U.S. District Judge Ralph E. Tyson. Dick is a veteran defense attorney in civil litigation in federal court. And she has represented both government and non-government clients in matters of federal employment law.

Carl Tobias, a University of Richmond law professor who follows the federal judiciary, said Dick's hearing appeared successful, especially with Vitter showing up in her support.

"I'm certain she'll be confirmed. It's just a matter of when," Tobias said, noting that early 2013 is the most likely scenario. "The calendar is working against her. There are still 18 people (other nominees) ahead of her."

Still, Senate Judiciary Chairman Patrick Leahy, D-Vt., is continuing to push to get Dick and as many other nominees confirmed before the end of the year as possible, even if it is unlikely. Leahy has repeatedly complained about Republicans stalling nominees from being confirmed.

"The nomination of Shelly Dick to the Middle District of Louisiana has been stalled since she was nominated back in April because the Republican senator from that state would not return a 'blue slip' indicating his support," Leahy stated in his prepared remarks.

"Following President Obama's re-election in November, he finally relinquished his hold on the nomination. It is past time to confirm this nominee. Now that Sen. Vitter has indicated, after an eight-month delay, that he supports the nomination, we should expedite Senate consideration.

"I see no reason why the Senate should not confirm all ... of the nominees appearing before us (Wednesday) before the end of the year," Leahy added.

In the U.S. Senate, each senator is given a "blue slip" by the chairman of the Senate Judiciary Committee on nominations in their state for federal judge, U.S. attorney and U.S. marshal.

Only once the two senators from the state of the nominee return the slips showing their approval is the confirmation hearing held.

Dick was the only federal judge nominee stalled out of five nominations Obama made at the same time in April.

"Shelly Dick comes equipped with decades of federal court litigation experience, which I think is very important," Landrieu said when introducing Dick during the hearing.





Page 1 of 1  
Page 1 of 1

"She brings to this committee a very thorough understanding of federal law, an unquestionably fair and evenhanded temperament and a wonderful attitude."

"I think she brings a lot of common sense and common ground to the bench, which is very important, and a true understanding of the law and its ramifications," Landrieu added, noting that she also is impressed with Dick's hunger mission trips to Cambodia, South Africa and Kenya.

Vitter also was quick to offer his "strong support" of Dick's qualifications.

"It's a terrifically solid legal background," Vitter said. "There's a lot of good qualifications and real-world practice experience, which is invaluable particularly for the district court position."

"I urge and look forward to her confirmation," he added.

Sen. Sheldon Whitehouse, D-R.I., told Dick and Wednesday's other three federal nominees not to be discouraged that only four members of the committee participated.

"That's actually a good thing," Whitehouse said. "It's a sign of non-controversialness."

Dick told the committee members she intends to serve as a "grassroots foot soldier" to uphold federal law.

Sen. Richard Blumenthal, D-Conn., asked her about her lack of experience practicing criminal law and if that was an issue.

"I don't feel qualified right now, but I will be qualified and the way I'll get to that ... is work ethic, work ethic, work ethic," Dick responded.

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1) Comment by Stephen - 12/13/2012  
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## Vitter removes block on judicial nominee

by jordan blum

Advocate Washington bureau



Show caption

Advocate file photo -- Baton Rouge attorney Shelly D. Dick has been nominated by President Barack Obama for the federal judgeship in Baton Rouge left vacant by the death of Ralph Tyson.

WASHINGTON — U.S. Sen. David Vitter removed his block of federal judge nominee Shelly D. Dick now the presidential election is over.

Dick was nominated by President Barack Obama in April to become the first female U.S. district judge in the Baton Rouge-based federal Middle District of Louisiana. Her confirmation was stalled by Vitter, R-La., in case GOP nominee Mitt Romney defeated Obama.

"I just thought so close to a federal election, we should have the election and abide by the results," Vitter said Wednesday.

Out of the nominations Obama made at the same time in April, Dick, of Baton Rouge, was the only federal judicial nominee whose confirmation was delayed.

Vitter said Dick should have her U.S. Senate Judiciary Committee hearing in December and that she could potentially be confirmed by the full Senate before the year's end. No committee hearing has been scheduled yet.

Once Obama won re-election, Vitter said, he turned in his "blue slip" the next week.

In the U.S. Senate, each senator is given a "blue slip" by the chairman of the Senate Judiciary Committee on nominations in their state for federal judge, U.S. attorney and U.S. marshal. Once both senators from the state of the nominee return the slips, which show their approval, the confirmation hearing is held.

While Vitter said he cannot project how Dick will rule as a judge in the future, he said she has the qualifications for the job. "She has a good, solid legal background," Vitter said.

Dick said, "I'm just happy to be able to serve our judiciary and our country and our citizens."

She is a founding partner in Forrester & Dick, a Baton Rouge law firm specializing in litigation. A year ago, she was one of three possible nominees recommended to Obama by U.S. Sen. Mary Landrieu, D-La., to replace the late Chief U.S. District Judge Ralph E. Tyson.

Dick is a veteran civil litigation defense attorney in federal court. And she has represented both government and non-government clients in matters of federal employment law.

Landrieu said she understood Vitter's "hesitancy" in blocking the judicial nomination on a temporary basis, but that Obama's victory removed any such reasoning. "There's no reason to slow down that process at all now," Landrieu said.

Earlier this year, White House spokeswoman Joanna Rosholm said Obama has “complete confidence” in Dick and that he hoped that her confirmation would proceed smoothly.

Vitter and Landrieu have some history of feuding over blue slips on federal nominees.

In May, Vitter stalled two appointments to the Federal Reserve Board before they were ultimately pushed through. In 2010, Vitter held up two Louisiana nominations — one for then-nominated U.S. District Judge Brian Jackson, of Baton Rouge, and a U.S. marshal candidate in New Orleans — in an effort to ensure that the U.S. attorney he supports in the Eastern District, Jim Letten, remained. Vitter relented once Letten was reappointed with support from Landrieu.

Similarly, in 2007, Landrieu successfully blocked the nomination of U.S. Attorney David Dugas for a federal judgeship, citing concerns about some of the cases Dugas handled. That was the only hold that Landrieu used during the eight years of the Bush administration.



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**MAGAZINE: CITY**

# WAIT AND SEE

VITTER STALLS COURTS FOR NOVEMBER

1 COMMENTS

BY CODY HOLDEN  
POSTED SEP 12, 2012

There has been a strange mixture of scrutiny and oversight surrounding a vacant federal judge seat in Louisiana. And while it's been centered on Baton Rouge's Shelly Dick, President Obama's nominee for the position, and Louisiana Senator David Vitter, the absence is affecting Louisiana at-large.



Following Dick's recommendation by Sen. Mary Landrieu, she underwent intense examination by Washington and the Department of Justice. "FBI agents were crawling all around my neighborhood," said the local litigation attorney. "They were approaching my neighbors asking if they knew anything about me. They did a full background check, and when I say that I literally mean everything including my shoe size."

The federal judgeship, a lifetime appointed position, differs from elected offices in this regard. Whereas elected officials need merely to meet the basic requirements of the office (see: David

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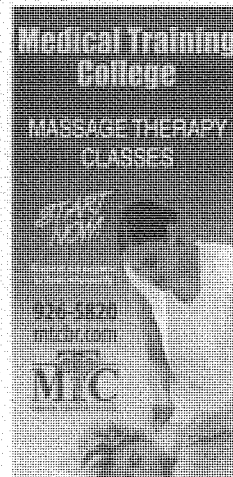
09/12/2012

Duke), federal judges must be recommended, nominated, and vetted at different levels to attain their posts. First, the ranking senator of the state, Landrieu in this case, recommends a given number of appointees to the President (three, in Obama's case). After the previously mentioned examination takes place, the President makes his selection. Because of the significance of the lifetime position, the process still has further vetting from this point. The nominee must then pass a Senate Judiciary committee hearing and a full Senate approval process. However, despite being ranked "qualified to well qualified" by the American Bar Association, Shelly Dick never made it that far.

"In order to get to the Senate judiciary committee you have to have a 'blue slip,' which is literally just a blue slip of paper that says to give this person a hearing," stated Dick. "That's where mine got bogged down. David Vitter refused to return the blue slip. His stated reason is to let the next president make the decision." And while he didn't offer any answers to Dick or *Digby* press time, Senator Vitter did issue a media statement earlier this summer in response to blocking Dick, stating, "By any measure, I've bent over backwards to cooperate regarding President Obama's Louisiana nominees, which has resulted in all 10 before this being confirmed in record time," Vitter said. "Now that it's a few months before a presidential election, however, I'm going to let the people speak before supporting any others."

While there hasn't been much more communication leaving the Vitter camp with regards to the nomination, there have been several key facts that point to the move as a politically-motivated decision. The federal judgeship itself seeks to be independent and impartial, with the lifetime status of the judge set, in theory, to combat the pull of partisan politics that surround re-election. Dick, a lifelong independent, feels that the politicization of the position has less to do with her, the appointee, as it does the appointer. "Senator Vitter doesn't even know my [voter] registration," states Dick. "It's not about me, it's not about my qualifications or party. It's that they won't let President Obama make the nomination."

A report by the Congressional Research Service demonstrates that anti-Obama sentiments within the Senate may indeed be a factor. With a 71-percent pass rate, President Obama has had fewer confirmations by the Senate throughout his term than the last four presidents. However, Shelly Dick is the only nominee of Obama's five nominations in April that is currently being stalled. If Republican nominee Mitt Romney wins the presidency this upcoming election, and Dick is nominated again for the position, the examination process for her will start again as the vetting must be current up to 30 days.

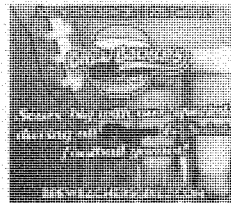


### READER POLL

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- ☐ No. It's not that bad, actually.
- ☐ Ehh ... It's reasonable for our size city.
- ☐ Yes. It takes way too long for me to get around because of traffic.
- ☐ I'M FULL OF ROAD RAGE RIGHT NOW.



VOTE



While the state of limbo has affected Dick's personal practice, perhaps the most significant consequence has come to the state. The third seat has been vacant since the passing of Judge Ralph Tyson in July 2011, forcing judges to scramble to cover the missing third position. "They've been sending judges from New Orleans, Lake Charles, and Shreveport at great cost to the taxpayers," states Dick. "And, you can just imagine how much it cost to check me between FBI agents, the Department of Justice, and being called to Washington."

This is not the first time that obstructionism has occurred in the Louisiana Senate when it comes to blue slips. Vitter put the brakes on another federal judge nominee and a potential U.S. marshal in 2010, only passing them once Sen. Mary Landrieu reappointed Vitter's chosen candidate for Eastern District attorney. The thwarting isn't limited to the states' Republican senator, however; on the other side of the aisle, Sen. Landrieu blocked Vitter's nomination for a federal judgeship in 2007. Amid the feuding senators and the indistinct reasoning behind obstructions, the one clear factor has been the detrimental results for the citizen and taxpayer.

"The prevailing view is that the role of the Senate is to advise and consent. It's gone past that. It's gone to block and stall and hold," stated Dick. "If a new nominee is put forward then it will be another year. All that hurts is real people who are trying to get access to the courts because you have two judges where you should have three."

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## COMMENTS



BARBARA @ 09/12/2012 01:55 PM  
sdd's article

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POSTED: FEB 16 | 20 COMMENTS

**BEING THE BEAT MASTER**  
POSTED: SEP 14 | 19 COMMENTS

**CHANNELING YOUR INNER CHILD**  
POSTED: JUL 25 | 17 COMMENTS

## Vitter blocking nominee

by jordan blum

Advocate Washington bureau



Show caption

speaks at the Press Club of Baton Rouge weekly luncheon.

WASHINGTON — Sen. David Vitter plans to block the federal judge nomination of Baton Rouge lawyer Shelly D. Dick, of Baton Rouge, at least until after the presidential election in November.

Dick is the only federal judge nominee stalled, out of five nominations President Barack Obama made at the same time in April.



Vitter, R-La., declined interview requests Monday, but did respond in a prepared statement.

"By any measure, I've bent over backwards to cooperate regarding President Obama's Louisiana nominees, which has resulted in all 10 before this being confirmed in record time," Vitter stated. "Now that it's a few months before a presidential election, however, I'm going to let the people speak before supporting any others."

Dick is a founding partner in Forrester & Dick, a Baton Rouge law firm specializing in litigation. In November, she was one of three possible nominees recommended to Obama by Sen. Mary Landrieu, D-La, to replace the late Chief U.S. District Judge Ralph E. Tyson.

Dick said she has failed in her efforts to contact Vitter.

"I have reached out to Sen. Vitter but have not had the opportunity to speak with him, and I don't know what his intentions are," Dick said Monday.

The Senate Judiciary Committee is meeting Wednesday to consider the other four nominees Obama made April 25.

"He (Vitter) hasn't contacted me about it, so you'd have to get his reasons why," Landrieu said Monday.

In the Senate, each senator is given a "blue slip" by the chairman of the Senate Judiciary Committee on nominations in their state for federal judge, U.S. attorney and U.S. marshal.

Only once the two senators from the state of the nominee return the slips showing their approval is the confirmation hearing held.

White House spokeswoman Joanna Rosholm said Monday in an email response, "The president has complete confidence in Shelly Deckert Dick, and hopes that she will proceed toward confirmation soon, becoming the first woman to ever serve on the Middle District of Louisiana District Court."

University of Richmond law professor Carl Tobias said Dick "seems to be qualified" and that Vitter appears to be stalling.

"There are 16 people (federal judge nominees) on the (Senate) floor now waiting for votes and some of them have been waiting for quite awhile," Tobias said.

Vitter and Landrieu also have some history of feuding over blue slips on federal nominees.

last month, Vitter stalled two appointments to the Federal Reserve Board before they were ultimately pushed through.

In 2010, Vitter held up two Louisiana nominations — one for then-nominated federal Judge Brian Jackson of Baton Rouge and a U.S. marshal candidate in New Orleans — in an effort to ensure that the U.S. attorney he supports in the Eastern District, Jim Letten, remained. Vitter relented once Letten was reappointed with the support from Landrieu.

Similarly, in 2007, Landrieu successfully blocked the nomination of U.S. Attorney David Dugas for a federal judgeship, citing concerns about some of the cases Dugas handled. That was the only hold that Landrieu used during the eight years of the Bush administration.

Judiciary Committee Chairman Patrick Leahy, D-Vt., does not comment on pending nominees before his committee. But his staff pointed to comments he made last month complaining about Republicans blocking federal nominations.

"I hope that Senate Republicans will stop blocking prompt confirmation of consensus nominees," Leahy said at the time. "That is a destructive development and new practice that has contributed to keeping the Senate behind the curve, keeping federal judicial vacancies unfilled, overburdening the federal courts and keeping Americans from securing prompt justice. The American people deserve better."

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## BR lawyer tapped for U.S. judgeship

BY JORDAN BLUM  
Capitol news bureau  
April 26, 2012

5 COMMENTS

WASHINGTON — President Barack Obama nominated Baton Rouge lawyer Shelly D. Dick on Wednesday to the federal judgeship left vacant by the death of Chief U.S. District Judge Ralph E. Tyson.

Tyson died in July after a long battle with lung cancer. He was chief judge of the Middle District of Louisiana of the U.S. District Courts, based in Baton Rouge.

Dick is a founding partner in Forrester & Dick, a Baton Rouge law firm specializing in litigation.

In November, she was one of three possible nominees recommended to Obama by U.S. Sen. Mary Landrieu, D-La. The other two were Baton Rouge lawyer Winston DeCuir Jr. and Christine Lipsey.

Dick is a veteran defense attorney in civil litigation in federal court. And she has represented both government and non-government clients in matters of federal employment law.

"I'm extremely honored and privileged I have the opportunity to serve Louisiana and the nation," Dick said late Wednesday afternoon.

Dick said she never set out to become a federal judge, but that she hopes her skill set will make her a good fit for the federal bench. "It's something I take extremely seriously, and I'm very humbled," she said.

For the past three years, Dick has served the Louisiana Workforce Commission as an ad hoc hearing officer in the Office of Worker's Compensation.

A native of El Paso, Texas, Dick graduated cum laude in business administration in 1981 at the University of Texas at Austin. She managed a \$3 million sales territory for Dow Chemical for five years before entering law school.

She then moved to Baton Rouge and earned her law degree in 1988 at LSU, where she was a member of the LSU Law Review.

Her name will now be sent to the U.S. Senate Judiciary Committee for

Adv  
Rou  
Dick  
Pres  
the I  
Belz  
the I

Print article

**RESOURCES**

**Letter to the editor**  
Send a letter to the editor to voice your opinion.

**BR Homicides Maps**  
Maps listing homicides or suspected homicides in EBR Parish for 2011 and 2010.

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Current gas prices in BR area.

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**Boost Testosterone 40+**  
Men over 40 are seeing shocking boosts in free testosterone with this discovery...

theadvocate.com/home/2868437-125/br-lawyer-tapped-for-us

1/3

the lawyer tapped for us. judgecap | Home | The Advocate — Baton Rouge, LA

consideration.

Committee members often do not take action on a nominee unless they have the approval of both of a state's senators. That means that any proposed judicial appointment in Louisiana also is subject to the approval of Republican U.S. Sen. David Vitter.

Dick said she looks forward to meeting with Vitter and other senators.

The power of confirmation or rejection of judicial nominees rests with the U.S. Senate.

Vitter did not immediately respond to a request for comment late Wednesday.

"After consulting with many respected members of the Baton Rouge Bar and meeting with many qualified candidates, I am confident that Shelly Dick is exceptionally qualified to serve the Middle District of Louisiana as an Article III federal judge," Landrieu said in a prepared statement.

"I believe she would make a wonderful addition to the federal judiciary and I was proud to recommend her,"

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[what's this]

Please log in to comment on this story  
Comments (5)

1) Comment by Straight Shooter - 04/26/2012

My last comment may have come out the wrong way. I meant to say that I think she will be balanced even though her practice may have been geared towards one side. That says a lot about her because not all nominees can easily switch gears from being an advocate of only one side to being fair to all litigants. From what I know about her, she is well-liked. She should easily be confirmed, even in an era of political crucifixion of federal judicial nominations.

2) Comment by Straight Shooter - 04/26/2012

As a local attorney, I can attest that Ms. Dick has a reputation of being courteous, professional and a great advocate. I think she will be a fair-minded judge, even if she has an insurance defense background.

3) Comment by tradewins - 04/26/2012

I will state, she is attractive.

4) Comment by tradewins - 04/26/2012

EM, why is she an excellent choice? I know nothing about her so I'm, and the vast majority of people in BR or LA, really looking for someone who knows where she stands on anything and everything, the trouble with the way judges are appointed (and elected for the same reason) is the average person has no dealings with the judicial system (except for complaining), there should be somewhere to go (electronically) where you can see what an appointee has supported or opposed or how a judge has ruled on cases.

5) Comment by Elderly Man - 04/26/2012

Excellent choice.

#### Contact Us

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## President Obama nominates BR attorney as U.S. Dist. judge

Posted: Apr 25, 2012 8:24 PM CDT  
Updated: Apr 30, 2012 5:27 AM CDT

By Kiran Chawla - bio | email

BATON ROUGE, LA (WAFB) - A Baton Rouge attorney could be Louisiana's newest federal judge.

President Barack Obama nominated Shelly Dick, 51, on Wednesday as U.S. judge for the Middle District of Louisiana.

"Practicing law is something that I wanted to do and I've done that, and I've enjoyed that," said Dick.

Now that opportunity is knocking at the door, Dick has her eyes set on the vacated federal judge seat. In November, she was one of three nominees recommended to president Obama.

"I'm humbled. I feel very privileged. I feel very honored," said Dick.

Dick was born and raised in El Paso, TX and graduated from the University of Texas in Austin in Business Administration. She then became a lawyer by earning her law degree from LSU and has since been practicing for 24 years.

Her expertise is as a defense attorney in civil litigation in state and federal court, primarily representing businesses and industry. There is one thing she says she does need to polish up on.

"One of the things that I would really need to do is get a fast learning curve on criminal matters because criminal is not something I've practiced on a day-to-day basis," said Dick.

The attorney said several years ago, there was an opening in middle district, but she passed it up. This time, she had to take her chances.

The other two nominees for the seat include Baton Rouge attorneys Winston Decuir Jr. and Christine Lipsey. Federal Judge Ralph Tyson vacated the position last July when he died in a long-fought battle with cancer. It's a position Dick said, if she gets, will be humbled to have.

"People's lives are at stake. Their liberty is at stake so that's very critical, and I don't take that lightly," said Dick.

Her name will now be sent to the U.S. Senate Judiciary Committee for consideration. Usually, committee members do not take action on a nominee if he or she does not have approval from both state senators. Senator Mary Landrieu has already called and congratulated Dick. She is waiting to hear from Senator David Vitter.

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Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Dick, Rachelle D.	2. Court or Organization USDC, Middle District Louisiana	3. Date of Report 01/03/2013
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)  US District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period  01/01/2012 to 12/31/2012
7. Chambers or Office Address  4981 Bluebonnet Blvd Baton Rouge, La. 70809		
<p align="center"><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Managing Member		Law Offices of Shelly D. Dick, LLC
2. Managing Member		Lamp Ladies, LLC d/b/a "Frockz"
3. Managing Member		Grace George, LLC
4. Managing Member		K & S Property Holdings, LLC
5. Director		I Hope, LLC

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting <b>Dick, Rachelle D.</b>	Date of Report 01/03/2013
--	------------------------------

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	Law Offices of Shelly D. Dick	\$269,656.25
2. 2012	Law Offices of Shelly D. Dick	\$247,500.00
3.		
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

**IV. REIMBURSEMENTS** *-- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.				
2. exempt				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**

Page 3 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	01/03/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Standard Mortgage	Mortgage on Rental Property #1	M
2.			
3.			
4.			
5.			



**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 7

<b>Name of Person Reporting</b>	<b>Date of Report</b>
<b>Dick, Rachelle D.</b>	<b>01/03/2013</b>

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Rental Property #1 Baton Rouge, La	D	Rent	M	W	Exempt				
2. Alliance Bernstein Mod Growth 1993-1995 ALTA		None	J	T					
3. Barron Asset Fund (Y)									
4. ING Clarion Real Estate Portfolio (Y)									
5. Dodge & Cox Income Fund	A	Dividend	K	T					
6. Fidelity VIP Contrafund Port Srv. (Y)									
7. Fidelity VIP Mid Cap Port Srv. (Y)									
8. Health Care Spdr (XLV)	A	Dividend	J	T					
9. Hugoton Royalty Trust	A	Dividend	J	T					
10. ING Fixed Accopunt (Y)									
11. ING Global Resources (Y)									
12. ING International Small Cap Fund (Y)									
13. iShares Dow Jones Select Dividend Index Fund	A	Dividend	K	T					
14. Louisiana Principal Protection Fund	A	Int./Div.	J	T					
15. Mutual Global Discovery Fund (Y)									
16. SPDR Gold Trust		None	J	T					
17. T. Rowe Price Spectrum International Fund	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	D = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C) and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 7

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Dick, Rachelle D.	01/03/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. EQ/Common Stock Index Portfolio	A	Dividend	J	T					
19. EQ/Equity 500 Index Portfolio		None	K	T					
20. Barron Asset Fund (Y)									
21. Texas Rare Earth Resources Corp. Stock		None	J	T					
22. Great-West Lifetime 2025 II F1 Fund (X)		None	P4	T					
23. Vanguard Total Market Index Fund (X)		None	J	T					
24. Columbia Portfolio Builder Moderate Aggressive Fund (X)		None	L	T					
25. Regions Bank Cash Accounts	A	Interest	K	T					
26. K & S Dick Property Holdings LLC Baton Rouge, La.	F	Rent	O	W					
27. Lamp Ladies LLC		None	J	U					
28. Grace George LLC		None	J	U					
29. Law Offices of Shelly D. Dick, LLC		None	N	U					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**

Page 6 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	01/03/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

Part I, lines 1 - 4, refers to LLC's in which I am a managing member. Under Louisiana law, the term for an owner of an LLC is "member". I have the ability to control assets in the LLC's listed in lines 1 - 4 of Part I.

Part I, line 5, states that I was a "Director" of I Hope LLC. While I Hope is also corporately organized as an LLC under Louisiana law, IHope chose as a matter of its governance structure to form and elect a Board of Directors. I served on the IHope LLC Board, as a Director during a portion of the reporting period.

**FINANCIAL DISCLOSURE REPORT**

Page 7 of 7

Name of Person Reporting	Date of Report
Dick, Rachelle D.	01/03/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ **Rachelle D. Dick**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		37	713	Notes payable to banks-secured (auto)		21	229
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		668	315	Notes payable to relatives			
Unlisted securities -- see schedule		577	350	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	800
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		569	672
Real estate owned -- see schedule	1	040	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		593	701
				Net Worth	1	779	677
Total Assets	2	373	378	Total liabilities and net worth	2	373	378
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Alliance Bernstein CollegeBound <i>fund</i>	
Age-Based: Moderate Growth 1993-1995	\$ 1,007
Columbia Portfolio Builder Moderate Aggressive Fund	58,753
Dodge & Cox Income Fund	27,469
EQ/Common Stock Index Portfolio	20,398
EQ/Equity 500 Index Portfolio	10,591
Great West Lifetime 2025 II T1 Fund	457,618
Health Care SPDR	10,160
Hugoton Royalty Trust	741
iShares Dow Jones Select Dividend Index Fund	39,876
Louisiana Principal Protection Fund	9,606
SPDR Gold Trust	6,907
T. Rowe Price Spectrum International Fund	9,343
Texas Rare Earth Resources Corp. stock	3,927
Vanguard Total Stock Market Index Fund	11,919
Total Listed Securities	<u>\$ 668,315</u>

Unlisted Securities

Grace George, LLC	\$ 12,350
K & S Dick Property Holdings LLC	240,000
Law Offices of Shelly D. Dick LLC	345,000
Lamp Ladies LLC	(20,000)
Total Unlisted Securities	<u>\$ 577,350</u>

Real Estate Owned

Primary residence	\$ 650,000
Rental property	190,000
Undeveloped lot (20% interest)	200,000
Total Real Estate Owned	<u>\$1,040,000</u>

Real Estate Mortgages Payable

Primary residence	\$ 403,250
Rental property	166,422
Total Real Estate Mortgages Payable	<u>\$ 569,672</u>

Senator WHITEHOUSE. Thank you very much, Ms. Dick.

Mr. Gordon, you are recognized for any statement, recognitions, or acknowledgments you would care to make.

**STATEMENT OF ANDREW PATRICK GORDON, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF NEVADA**

Mr. GORDON. Thank you, Chairman, and let me thank the Committee entirely for having us here today. Ranking Member Senator Grassley and Senator Blumenthal, thank you for coming and allowing us to meet with you today.

I would like to thank the President for making this nomination. I would like to thank Senator Reid for his recommendation and his very kind words today, and thank you to Senator Heller for his kind words and supporting this nomination.

I would like to recognize my wife and inspirator, Sue Gordon. She is at home in Las Vegas with our daughter, Allison, who is a seventh grader at Faith Lutheran Middle School. My oldest son, Dan Gordon, is a sophomore at the University of Colorado at Boulder, who is studying for finals right now, so we figured that was a little more important. My other son, Matt Gordon, is a freshman at the University of San Diego. He, too, is studying for finals and could not make it out here as well.

I would like thank my parents: my mother, Lillius Gordon, who is in Las Vegas watching this on the Webcast. My father, Hank Gordon, and his wife, my second mom, Marti Gordon, they are also watching this on the Webcast from Las Vegas.

My brother, Scott, who is here with me from Albuquerque, was able to attend. I have two other brothers, John and Jeff. They are also watching this from Las Vegas. And my sister, Sandy, who is an attorney practicing in San Diego, is watching this as well. I thank them for their support.

With me today is my cousin, Allison Gordon, and her two children—I am sorry, Allison Cox, and her two children, Trey and Lauren, and I thank them for coming down and supporting us.

And, finally, with me today also is the managing partner of my law firm, McDonald Carano Wilson. His name is John Frankovich. He flew out from Reno to be here, and I thank him for his efforts to come out and support us.

I would also like to thank all the lawyers and staff at my law firm, McDonald Carano, in Las Vegas and Reno, who without their support I would not be able to get this far.

Thank you very much for your time.

[The biographical information of Mr. Gordon follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Andrew Patrick Gordon

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of Nevada

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

McDonald Carano Wilson LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102

4. **Birthplace:** State year and place of birth.

1962; San Francisco, California

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1984 – 1987, Harvard Law School; J.D., 1987  
1980 – 1984, Claremont McKenna College; B.A. (*cum laude*), 1984  
Summer 1982, University of Nevada at Las Vegas; no degree awarded

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1994 – present  
McDonald Carano Wilson LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102



Associate (1994 – 1997)  
 Partner (1997 – present)

1992 – 1994  
 Dawson and Associates, an affiliate of Streich Lang  
 3800 Howard Hughes Parkway, Suite 1500  
 Las Vegas, Nevada 89109  
 Associate

Summer 1986, 1987 – 1992  
 Streich Lang Weeks and Cardon  
 100 West Washington, Suite 2100  
 Phoenix, Arizona 85004  
 Associate (1987 – 1992)  
 Summer Associate (Summer 1986)

Summer 1986  
 McCutchen Black Verleger and Shea  
 [Firm no longer exists]  
 Los Angeles, California  
 Summer Associate

Summer 1985  
 Lionel Sawyer and Collins  
 300 South Fourth Street, Suite 1700  
 Las Vegas, Nevada 89101  
 Summer Associate

Summer 1984  
 Henry R. Gordon, Chtd.  
 300 East Fremont Street  
 Las Vegas, Nevada 89101  
 Runner/office help

Other Affiliations (uncompensated):

2010 – present  
 Desert Spring United Methodist Church  
 120 North Pavilion Center  
 Las Vegas, Nevada 89144  
 Trustee

2010 – present  
 Southern Nevada Sports Hall of Fame Foundation, Inc.  
 P.O. Box 50495

Henderson, Nevada 89016  
Trustee

1999 – 2000  
Las Vegas Founders Club, Inc.  
1680 Village Center Circle  
Las Vegas, Nevada 89134  
Secretary

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the military. I registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional

Martindale Hubbell AV Preeminent rating

Life Fellow of the American Bar Foundation (2012)

Mountain States Super Lawyers (2009 – present)  
Mountain States Top 10 (2012)

Best Lawyers in America for the categories of Bet-the-Company Litigation; Commercial Litigation; Litigation – Labor and Employment; Litigation – Real Estate; and Litigation – Construction (2006 – present)

Chambers USA (2004 – present)

Legal Elite 2011, Published in Nevada Business Magazine (2011)

Nevada Super Lawyers (2007 – 2008)

Academic

1984 Nevada nominee to the Rhodes Scholars program

Claremont McKenna College Salvatori Scholar Award

Uhlmann Merit Scholarship (upon admission at Claremont McKenna College)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1988 – present)

Civil Rules Subcommittee of the Standing Committee on the Local Rules of Practice for the District of Nevada (2005 – present)

Clark County Bar Association (1992 – present)

District of Nevada Lawyer Admissions Fund Committee (2001 – 2004)

District of Nevada Lawyer Representative to the Ninth Circuit (2001 – 2004)  
Co-chair (2003 – 2004)

Maricopa County Bar Association (1987 – 1992)

Nevada American Inn of Court  
Barrister, Assistant Program Chair, and Program Chair (mid-to-late 1990s)

Ninth Circuit Conference Executive Committee (2004 – 2007)

Ninth Circuit Court of Appeals Lawyer Representatives Coordinating Committee (2004 – 2007)  
Chair (2006 – 2007)  
Chair-elect (2005 – 2006)  
Vice chair (2004 – 2005)

State Bar of Arizona (1987 – present)

State Bar of Nevada (1988 – present)  
CLE Committee (1993 – 2004)  
Chair (2003 – 2004)  
Executive Subcommittee (1993 – 1999)  
CLE Publications Committee (2004 – 2007)  
Chair (2004 – 2007)  
Committee to draft Model Pattern Jury Instructions (2003 – 2011)  
Chair (2003 – 2011)

United States Magistrate Judge Merit Selection Panel, District of Nevada (2011)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Arizona, 1987  
Nevada, 1988

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1999  
United States Court of Appeals for the Ninth Circuit, 1993  
United States District Court for the District of Arizona, 1987  
United States District Court for the District of Nevada, 1988  
Arizona state courts, 1987  
Nevada state courts, 1988

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Boys and Girls Club of Las Vegas ("Boys Night Out" Fundraising Event Committee) (early 1990s)  
Chair (early 1990s)

Desert Spring United Methodist Church  
Trustee (2010 – present)

Las Vegas Chamber of Commerce Leadership Las Vegas Class of 1995

Las Vegas Founders Club (1993 – 2001)  
Secretary (1999 – 2000)

Southern Nevada Sports Hall of Fame  
Trustee (2010 – present)

St. Elizabeth Ann Seton Catholic Church Building Fund Committee (mid – 1990s)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Andrew P. Gordon, "Special Feature: Ninth Circuit Riding Wave of Immigration Appeals," Nevada Lawyer, July 2006. Copy supplied.

Andrew Gordon, "Recent Developments in the Federal Court System," Nevada Lawyer, February 2004. Copy supplied.

Andrew P. Gordon, "Lawyer Representatives to the Ninth Circuit Conference: Your Connection to Federal Court," Nevada Lawyer, June 2003. Copy supplied.

Andrew P. Gordon and Ronold P. Platner, "Nevada Limited Liability Companies, A New Way To Do Business," Inter Alia (Journal of the State Bar of Nevada), October 1992. Copy supplied.

Andrew P. Gordon, "An Analysis of Legalized Prostitution," Claremont Journal of Public Affairs, Summer 1984. Copy supplied.

As a member and Chair of the State Bar of Nevada's CLE and CLE Publications Committees, I oversaw production of the State Bar's Family Law Manual (2004), Appellate Manual (2004), and Nevada Jury Instructions - Civil (2011). Copies of the title/cover pages, tables of contents, and introductions of each are supplied. (I do not have a copy of the 2004 version of the Family Law Manual, so the materials supplied are from the updated 2008 version.)

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a member of the Civil Rules Subcommittee of the Standing Committee on the Local Rules of Practice for the District of Nevada, I helped draft revisions to some of the Local Rules of Civil Practice. Particularly, I drafted early versions of revisions to Local Rules 6-2, 7-2, 7-5, 7-6, 10-5, and 26-4. The Local Rules can be found at:

<http://www.nvd.uscourts.gov/Files/LOCAL%20RULES%20OF%20PRACTICE%20August%202011.pdf>.

In 2011, I assisted District Judge Gloria Navarro and her committee in drafting the District Court's General Order regarding the Patent Pilot Program. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials

On June 1 and June 8, 1995, I testified before the Nevada State Senate Committee on Taxation on behalf of my client, Sun City Summerlin Community Association, Inc., regarding SB 512, which related to the assessment of taxes for units in common-interest communities. Minutes supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list includes seminars and presentations that I have identified from my files and personal recollections. There may be other presentations or lectures I have participated in that I have been unable to identify or recall.

"Deposition Skills" for the National Institute for Trial Advocacy. I have presented this program twice each year, in Phoenix, Arizona (2002 – 2008, 2011 – present) and Las Vegas, Nevada (2007 – present). I serve as a Team Leader and

faculty member, and I lecture on “preparing for depositions,” “witness preparation” and “use of exhibits.” I also critique student performances. My standard outlines and presentation slides are supplied.

June 28, 2012 – Faculty Member, Nevada State Bar’s Trial Academy, Coronado, California. I lectured and led a discussion on “trial themes and theories,” and critiqued student performances. Outline supplied.

July 19, 2007 – Panelist in a public question-and-answer session with Supreme Court Associate Justice John Paul Stevens at the Ninth Circuit Judicial Conference, Honolulu, Hawaii. The program was taped and broadcast on C-SPAN and is available for viewing at <http://www.c-spanvideo.org/program/PaulSte>.

July 18, 2007 – Ninth Circuit Judicial Conference, Honolulu, Hawaii. I introduced a panel discussion on Confidentiality in the Courts. I also presided over the introduction and discussion of Resolutions to be considered by the Conference. I have no notes, transcript, or recording. The Conference was organized by Renee Lord, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

July 16, 2007 – Ninth Circuit Judicial Conference, Honolulu, Hawaii. As Chair of the Lawyer Representatives Coordinating Committee, I presided over the New Lawyer Representatives Orientation Program, and the Lawyer Representatives Business Meeting. I led the discussion on a variety of topics, including the role of Lawyer Representatives and tasks to be accomplished in the upcoming year. I have no notes, transcript, or recording. The Conference was organized by Renee Lord, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

March 1, 2007 – Welcoming remarks, Conference of Chief District Judges of the Ninth Circuit, San Diego, California. I have no notes, transcript, or recording. The Conference was organized by Renee Lord, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

August 25, 2006 – Moderator for a “question and answer” presentation by the Federal Bar Association with Ninth Circuit Judges Hug, Schroeder, Kozinski and Rawlinson, Las Vegas, Nevada. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, VA 22201.

July 12, 2006 – Ninth Circuit Judicial Conference, Huntington Beach, California. I presided over the introduction and discussion of Resolutions to be considered by

the Conference. I have no notes, transcript, or recording. The Conference was organized by Renee Lorda, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

July 10, 2006 – Ninth Circuit Judicial Conference, Huntington Beach, California. I participated in panel discussions at the New Lawyer Representatives Orientation Program, and the Lawyer Representatives Business Meeting. Discussion topics included the role of Lawyer Representatives and tasks to be accomplished in the upcoming year. I have no notes, transcript, or recording. The Conference was organized by Renee Lorda, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

January 18, 2006 – Moderator, Panel discussion on “Update on Security Issues: Threat Assessment and Criminal Defendant Monitoring,” Conference of Chief District Judges of the Ninth Circuit, Tucson, Arizona. Discussion topics included the investigation and assessment of threats against federal judges, and then-current programs for protecting judges. I have no notes, transcript, or recording. The Conference was organized by Renee Lorda, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

July 18, 2005 – Ninth Circuit Judicial Conference, Spokane, Washington. I participated in panel discussions at the New Lawyer Representatives Orientation Program, and the Lawyer Representatives Business Meeting. Discussion topics included the role of Lawyer Representatives and tasks to be accomplished in the upcoming year. I have no notes, transcript, or recording. The Conference was organized by Renee Lorda, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

January 20, 2005 – Chair, Panel discussion on Congressional Relations at the Conference of Chief District Judges of the Ninth Circuit, Rancho Santa Fe, California. Discussion topics included the legislative process, the importance of maintaining good relationships with Congress, and the ethical limitations on what judges can do. I have no notes, transcript, or recording. The Conference was organized by Renee Lorda, Assistant Circuit Executive, Office of the Circuit Executive for the Ninth Circuit, United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103.

April 29, 2004 – Moderator for a “question and answer” session with various circuit, district, magistrate and bankruptcy judges at the District of Nevada’s annual District Conference, Reno, Nevada. I have no notes, transcript, or recording. The Conference was organized by Lance Wilson, District Court



Executive, United States District Court, 333 Las Vegas Boulevard South, Las Vegas, NV 89101.

October 8, 2003 – Presenter, status report to the State Bar of Nevada Board of Governors about the Model Pattern Jury Instructions, Las Vegas, Nevada. Meeting minutes supplied.

May 6, 1997 – Participant, Seminar on Employer Liability that was presented to a group of business owners, Las Vegas, Nevada. I do not recall the sponsoring organization. Notes supplied.

I was a Barrister, Assistant Program Chair, and then Program Chair of the Nevada American Inn of Court in the mid-to-late 1990s. In those capacities, I helped to prepare and present educational programs to the Inn membership. I do not recall the dates or topics of those programs, and I have no notes, transcript, or recording of the presentations.

Over the years, I have lectured or participated in panel presentations to groups of lawyers on a variety of topics, including Federal Court Practice, Civil Discovery, Alternative Dispute Resolution and Construction Law. I do not recall the dates of those presentations, or the groups before whom I spoke. I have no notes, transcript, or recording of those presentations.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Press release, *McDonald Carano Wilson Attorney Andrew Gordon Appointed to Chair Committee by State Bar of Nevada*, McDonald Carano Wilson, Sept. 2, 2003 (reprinted in multiple outlets). Copy supplied.

Steve Friess, *Plan to Adorn Medians Irks South Strip Owners*, Las Vegas Review-Journal, Aug. 4, 1998. Copy supplied.

Caren Benjamin, *Jury Awards \$190,000 to Woman Made Pregnant as Teen in State Custody*, Las Vegas Review-Journal, June 3, 1997. Copy supplied.

In 1997, I was interviewed by one of the local television news programs immediately after the oral argument before the Supreme Court of Nevada in the appeal of Sun City Summerlin Community Association, Inc. v. Nevada. I have no notes, transcript, or recording of that interview.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held a judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have never been an unsuccessful candidate for elective office or an unsuccessful nominee for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held office in or rendered services to any political party or election committee. I have never held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk:

I did not serve as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates:

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1987 – 1992  
Streich Lang Weeks and Cardon  
100 West Washington, Suite 2100  
Phoenix, Arizona 85004  
Associate

1992 – 1994  
Dawson and Associates, an affiliate of Streich Lang  
3800 Howard Hughes Parkway, Suite 1500  
Las Vegas, Nevada 89109  
Associate

1994 – present  
McDonald Carano Wilson LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102  
Associate (1994 – 1997)  
Partner (1997 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have served as a private arbitrator and mediator over the past approximately ten years. The matters I have handled include disputes involving professional services firms, construction disputes, breach of fiduciary duty claims, employment disputes (including wrongful termination), and real estate investment disputes. Because arbitrations and

mediations are confidential, I cannot share specific details about these matters. Therefore, the following matters are discussed in general terms.

1. Wrongful termination (arbitration): A casino marketing executive was terminated based upon allegations of improper extensions of credit, improper loans to a customer, and improperly allowing a customer to cash out chips while a debt was pending. The executive commenced an arbitration proceeding alleging wrongful termination. As the arbitrator, I had to rule upon numerous discovery motions, motions in limine, and substantive motions. The arbitration hearing lasted 15 days, and involved over 300 documents and exhibits and testimony from several witnesses.
2. Breach of fiduciary duty/derivative action (arbitration): A member in a limited liability company sued the manager of the LLC alleging, among other things, that the manager breached fiduciary duties by loaning over \$850,000 of the LLC's funds to an affiliated entity without proper authorization. The member asserted direct claims of fraud and derivative claims (on behalf of the LLC and its investors) of breach of fiduciary duty. The member sought to pierce the corporate veil of the LLC and its manager (which also was an LLC) to collect against the funds of an individual. The parties filed approximately 10 motions for partial summary judgment, numerous discovery motions and a motion in limine. The arbitration hearing lasted three days and involved hundreds of documents and exhibits and testimony from three witnesses. I was the chair of the arbitration panel.
3. Clergy employment dispute (mediation): A member of the clergy entered into a separation agreement with his church. The agreement contained a non-disparagement provision. He applied for, but was denied, a similar position at a church in another state. He later heard that people associated with his former church made disparaging statements to the church he applied to. He filed a lawsuit claiming breach of contract, defamation and interference with prospective economic advantage. I successfully mediated the parties to a settlement of this very emotional dispute.
4. Construction dispute (arbitration): This arbitration arose from a dispute between the owner of a race track and a general contractor who performed remodeling work at the track. The dispute involved the interpretation of construction contracts, plans and change orders; an analysis of whether additional payments were owed to the contractor; and whether the owner was entitled to offsets and deductions for allegedly defective work. The arbitration hearing lasted three days. After entry of the Interim Award, the parties filed motions for attorneys' fees.

5. Intellectual property (mediation): The creator of a computer-based fantasy sports game entered in to a Memorandum of Understanding with another company that would invest funds and help market and distribute the product. Shortly thereafter, disputes arose as to access to and control of software and computer source codes. After the parties terminated their relationship, the game creator claimed that the investor stole his intellectual property and created a similar product. I mediated the case to a settlement after a full-day mediation.
6. Real estate development joint venture (arbitration): This dispute involved a joint venture created to build over 1200 homes in a master-planned community. Various disputes arose during the life of the project, some of which were resolved by the parties and some of which lingered for years. Litigation ensued, and the matter was referred to arbitration. I chaired the three-member arbitration panel. Plaintiffs' allegations included breach of fiduciary duty, self-dealing, improper payments to various entities affiliated with one of the partners, and improper accounting and budgeting. Plaintiffs sought compensatory and punitive damages. The parties engaged in significant motion practice (both before and after the arbitration hearing), including motions for summary judgment, motions in limine, and discovery motions. Eventually, the parties stipulated to a hybrid, condensed arbitration proceeding, which lasted three days and involved several witnesses and hundreds of documents and exhibits.
7. Partnership (arbitration): A partner in a mini-storage business sued the partnership and the other partners alleging breach of fiduciary duty for failing to pay him distributions, both while the partnership existed and upon dissolution. The hearing lasted three days. The parties filed motions for summary judgment and motions for reconsideration.
8. Accounting Partnership (arbitration): An accountant retired from her firm and later performed part-time accounting work for another accountant. Her former firm refused to pay her full retirement payments based, in part, upon a non-compete provision in the firm's Partnership Agreement, and her alleged breaches of fiduciary duty while she was still at the firm. The parties filed claims against each other seeking compensatory and punitive damages. Prior to the arbitration hearing, the parties submitted cross-motions for partial summary judgment, which resolved some of the issues. The ultimate decision required me to analyze the merits of the various claims, and to calculate the damages and offsets claimed by each party.
9. Contract dispute (arbitration): Buyer contracted with a home builder for construction of a semi-custom luxury home. Disputes arose over

numerous plan changes, the costs associated with those changes, the interpretation of the contract, and the timing of construction. Each party sought specific performance of the contract plus damages. I chaired the three-member arbitration panel.

10. Tax consulting company (arbitration): A company purchased tax-consulting services from a provider, based upon representations about the tax savings that could be achieved. Purchaser later realized that the promised savings could not be achieved without a corporate restructuring that was undesirable. Purchaser sought rescission of the contract based upon fraudulent misrepresentation, and/or damages for breach of contract.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Since graduation from law school, my practice has continuously focused on civil litigation and alternative dispute resolution, with primary emphasis on complex, commercial disputes. I have significant experience in business, real property, construction, employment and title disputes, and disputes over the control and dissolution of partnerships and closely-held companies. From 1997 to 2004, I was more actively involved in litigation arising from commercial construction projects (primarily hotel/casino projects). Over the past ten years, I have become more active as a private arbitrator and mediator.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Throughout my career, my typical clients have been business entities or individual business owners, ranging in size from Fortune 500 companies to individuals and small, closely-held entities. Between 1997 and 2004, when I was more actively involved in construction litigation, my typical clients on such matters were contractors, subcontractors and owners in commercial construction litigation matters.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually all of my practice has been in litigation, with frequent court appearances. Over the years, I have occasionally assisted clients with transactional matters, but only on a very limited basis.

## i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 40% |
| 2. state courts of record:  | 60% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

## ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |

## d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried nine cases to verdict, judgment or final decision. I was sole counsel in two, lead counsel in five, and associate counsel in two.

## i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 22% |
| 2. non-jury: | 78% |

## e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- Walters v. FSP Stallion I, LLC, et al., Case No. A564089 (Eighth Judicial District Court; Judge Mark Denton); consolidated with Case No. A566640 (Judge Elizabeth



Gonzalez). Supreme Court of Nevada Case No. 55912 (writ petition denied); 2010 – 2012.

I represented the Federal Deposit Insurance Corporation (“FDIC”), as Receiver for Community Bank of Nevada (“CBN”). Defendant FSP Stallion entities (collectively “Borrowers”) purchased a golf course from plaintiff Walters. To finance the purchase, they borrowed over \$15 million from CBN; Walters guaranteed the loan. After Borrowers defaulted on the loan, Walters attempted to avoid his Guaranty by suing CBN and the Borrowers. CBN asserted claims against Walters and the Borrowers. The District Court granted CBN’s Motion for Summary Judgment in part, finding Walters liable under the Guaranty but ordering a trial on the amount Walters owed under the Guaranty. Subsequently, the FDIC was named Receiver of CBN and intervened in the lawsuit in place of CBN. I and my firm were retained to represent the FDIC at this point.

Prior to trial, Walters filed a Petition with the Supreme Court of Nevada seeking a writ directing the District Court to vacate its entry of summary judgment. The Supreme Court of Nevada unanimously ruled against Walters. After a three-day trial, the judge ruled that the golf course’s value was \$10 million, leaving an initial deficiency of more than \$7 million. Subsequently, the court granted our motion to add interest, costs and attorneys’ fees to the deficiency amount, making the total deficiency judgment over \$11 million. I was lead counsel on the trial, and second chair on the writ proceedings. I edited and argued most of the substantive and pre-trial motions, supervised trial preparation, cross-examined witnesses at trial, and gave the opening statement and closing argument. I edited the papers filed in opposition to the writ petition, and assisted in preparation for oral argument. This case recently settled.

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2. Sun City Summerlin Community Association, Inc. v. Nevada, 944 P.2d 234 (Nev. 1997). Eighth Judicial District Court matters were presided over by Judges Jeffrey Sobel and Mark Denton: 1993 – 2002.

Each year from 1993 through 2002, Sun City Summerlin Community Association, Inc. ("SCSCAI") challenged the Clark County Assessor's valuations of its golf courses and recreation centers. SCSCAI contended, among other things, that the assessments violated the relevant statute, that the Assessor did not properly account for the deed restrictions on the use and sale of the properties, and that the assessments constituted a double taxation because the value of these amenity properties were reflected in (and therefore taxed through) the increased values of the homes in Sun City Summerlin. The legal challenges each year began with proceedings before the Clark County Board of Equalization, then an appeal to the State of Nevada Board of Equalization, then lawsuits filed in the Eighth Judicial District Court (Clark County, Nevada). Ultimately, the cases were appealed to the Supreme Court of Nevada, which held the statute unconstitutional and rejected the double-taxation argument, but agreed the Assessor did not properly account for the deed restrictions imposed on the properties. Thus, the case was remanded for further proceedings. Subsequently, the County and State Boards ruled that the parcels of land should have nominal values (\$1,000), but that the improvements on those properties were not entitled to those nominal values. The District Court affirmed the State Board's reduction of the land values, but held that the improvements should be valued less. Thus, the District Court again remanded the matter for valuations of the improvements, and other related decisions. The parties filed cross-appeals of that decision to the Supreme Court of Nevada. Ultimately, the case was settled in 2002.

I was lead counsel for SCSCAI throughout the case. I coordinated the work of the experts, wrote the papers and argued the case before the County and State Boards of Equalization, wrote and argued the case and motions at the District Court, prepared the papers for the appeal, and argued before the Nevada Supreme Court.

Opposing counsel:  
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 Civil Division  
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 702-455-4852  
 Attorneys for Clark County and Defendant Schofield

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 Attorneys for State of Nevada, Department of Taxation

Counsel for Amicus Curiae The Community Association Inc.:  
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 775-688-3000

3. Fisher, et al. v. Fleming, et al., Case No. A-11-635650-B (Eighth Judicial District Court, Judge Elizabeth Gonzalez); Fleming v. Fisher Technical Services, Inc., et al., Case No. 2:11-cv-00499-GMN-LRL (United States District Court, District of Nevada, Judge Gloria Navarro); 2011 – 2012.

Fisher and Fleming were business partners. Disputes arose concerning the operations of their businesses, and Fisher sold his interest to defendant Fisher Technical Services Rentals, Inc. and several individual defendants (collectively, “Tait”) in violation of agreements between Fisher and Fleming. Fleming asserted that Fisher and the Tait Defendants conspired to force Fleming to sell his interests in the businesses at a discounted price. Fleming filed a federal court lawsuit alleging, among other things, breach of various contracts, unjust enrichment, tortious interference with contracts, breach of fiduciary duty, and fraud. Unbeknownst to Fleming, Fisher had already filed, but not served, a state court lawsuit against him. Subsequently, Fisher amended his state court complaint to add additional parties, including two employees he had terminated and the Tait Defendants. Fisher sought a preliminary injunction removing Fleming from management and preventing the businesses from rehiring the fired employees. The court denied most of the requested relief, and instead entered injunctive relief generally favoring Fleming. As a result, Fleming dismissed the federal lawsuit and pursued his claims in the state court. The parties conducted extensive written discovery. Several motions were filed on discovery, procedural and substantive issues. The case was aggressively litigated, including several motions, an evidentiary hearing with witnesses, injunctions and motion hearings. The parties recently entered into a settlement.

I was lead counsel for defendant Fleming on all aspects of the case: supervising discovery, writing and/or editing court filings, arguing all motions, and examining and cross-examining witnesses at the evidentiary hearing.

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4. Houston v. Boone, et al., Case No. A388314 (Eighth Judicial District Court, Judge Huffaker), aff'd, 78 P.3d 71 (Nev. 2003); 2000 – 2004.

Boone owned a home that was encumbered by a deed of trust in favor of Norwest Mortgage ("Norwest"). In June 1998, Boone refinanced the Norwest loan with a loan from Bank of America. Bank of America's loan paid off the entire Norwest loan. By doing so, Bank of America expected to receive a first-position deed of trust lien against the home. Bank of America did not know that a few hours before it recorded its deed of trust, plaintiffs (the Houstons) recorded a Writ of Attachment against Boone's home. Neither the Writ of Attachment nor a related Lis Pendens appeared on the title search that Bank of America had obtained. Thus, Bank of America closed its loan and recorded its deed of trust unaware of the recorded Lis Pendens and Writ of Attachment.

The district court enjoined the Houstons from executing against the property pending the final resolution. The parties filed cross-motions for summary judgment in place of a trial on the merits. The court ruled that Bank of America satisfied the criteria for equitable subrogation, and therefore succeeded to Norwest's senior lien position. The Supreme Court of Nevada affirmed the summary judgment, ruling that the Houstons were not prejudiced by the equitable subrogation of Bank of America into the senior position formerly occupied by Norwest.

I was lead counsel for Bank of America. I wrote and/or edited all court filings, argued the motions, prepared the papers for the appeal, and argued before the Supreme Court of Nevada.

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5. Allison, Curtis, Kingsley, Moes, Michael & Sanchez v. Bernstein, Case No. A523262 (Eighth Judicial District Court, Judges Cherry and Gonzalez); 2006 – 2009.

Dr. Bernstein, a pediatric oncologist, worked with Plaintiff, a medical practice group. Plaintiff obtained an *ex parte* injunction against Dr. Bernstein preventing him from treating patients, speaking with referring physicians, and coming to the office. Plaintiff alleged that Dr. Bernstein threatened one of the doctors in the group, and therefore represented a threat to the safety and well-being of CCCN's physicians and employees.

I represented Dr. Bernstein. After filing a motion to dissolve the injunction, I convinced Plaintiff's counsel to modify the injunction to allow Dr. Bernstein to establish his own practice group, retrieve his files and personal effects, and communicate with Plaintiff's staff and doctors in connection with treating patients. Subsequently, Plaintiff interfered with Dr. Bernstein's ability to obtain patient files and other items and to establish his practice. We filed several motions to compel production of documents and information, five motions for contempt, and several

motions to strike Plaintiff's pleadings. The court entered many of the sanctions we requested. Eventually, the dispute was settled through negotiations between counsel for the parties.

I was lead counsel for Dr. Bernstein, supervising all court filings and discovery, editing all court filings, arguing all motions, and examining the witnesses at the evidentiary hearing.

Counsel for Plaintiff (during initial stages):

Cory J. Hilton, Esq.  
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Counsel for Plaintiff (during latter stages):

Michael H. Singer  
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702-454-2111

6. Canfora v. ExxonMobil Corporation, et al., Case No. A417140 (Eighth Judicial District Court, Judges Sobel and Glass); 2000 – 2002.

Plaintiff, a young girl, was burned in a gasoline fire while filling her family's car at a gas station. Plaintiff claimed, among other things, that the fire was caused by an electrostatic shock. Plaintiff sued the gasoline company, the manufacturers of the car, pump and handle, the station owner and others. I began as lead counsel for ExxonMobil Corporation, Mobil Oil Corporation and Mobil Corporation. I oversaw our investigation and discovery, conducted several depositions, coordinated with experts and consultants, wrote and/or edited court filings, and argued many motions. I later served as secondary/local counsel. The parties engaged in extensive investigation and written discovery, and conducted several depositions. Numerous motions were filed, including discovery motions, motions for sanctions, motions in limine, and at least one motion for summary judgment. Eventually, the case settled before trial.

Co-counsel:

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Robert L. Johnson, Esq.  
 Ryan Marks Johnson & Todd  
 [Firm no longer exists]

7. P.F. Chang's China Bistro, Inc. v. OpBiz, LLC, Case No. 2:08-cv-01253-RLH-LRL  
 (United States District Court, District of Nevada, Judge Roger L. Hunt); 2008 – 2010.

P.F. Chang's operated a restaurant in the Aladdin Hotel & Casino, pursuant to a lease. Aladdin later filed for bankruptcy protection, and OpBiz desired to purchase it to convert it into the Planet Hollywood hotel and casino. OpBiz and P.F. Chang's agreed that OpBiz would assume the lease, with certain modifications, including a specific reconfiguration of P.F. Chang's restaurant. The agreement was memorialized in a Bankruptcy Court Order. After P.F. Chang's began preparations for the reconfiguration, OpBiz decided not to reconfigure, and instead remodeled the façade of the hotel, including the restaurant's façade. P.F. Chang's insisted that a new lease was needed, to avoid breaching the Bankruptcy Court Order. Nevertheless, without amending the Lease or Order, OpBiz demolished P.F. Chang's storefront, removed its exterior signage and blocked the direct access to and visibility of the restaurant, all without P.F. Chang's permission. P.F. Chang's sued for breach of contract, and OpBiz counterclaimed for breach of contract. The parties conducted written discovery and depositions, and filed discovery motions, motions for summary judgment and motions in limine. Shortly before trial, OpBiz negotiated the sale of the hotel/casino, and the parties (along with the new owner) negotiated a settlement. I was lead counsel for P.F. Chang's, supervising discovery, conducting depositions, arguing motions and preparing for trial.

Counsel for OpBiz:  
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8. Nyamuswa v. Coleman-Toll, LLP, Case No. A508810 (Eighth Judicial District Court, Judge John Pilkington (deceased)); Coleman-Toll, LLP v. Nyamuswa, Case No. 51887 (Nevada Supreme Court); 2005 – 2008.

Plaintiffs entered into a written contract to purchase a house built by Defendant Coleman-Toll, LLP, and deposited earnest money towards the purchase price. Plaintiffs later canceled the contract and demanded their earnest money back, claiming that the builder did not fully respond to all of their option requests. The Defendant/builder refused to return the earnest money because the contract provided that the funds could be retained as liquidated damages. The case initially was tried before an arbitrator, who found in favor of the Plaintiffs. Defendant appealed the decision, and a trial was conducted. The trial judge found that Defendant did not timely answer every request for information and pricing from Plaintiffs, and thereby breached the contract, entitling Plaintiffs to the return of their earnest money deposit. Defendant appealed that decision to the Supreme Court of Nevada. The case ultimately settled while that appeal was pending.

I was lead counsel for Defendant on the case throughout. I oversaw written discovery, conducted depositions, conducted the trial, and supervised the appeal until the case was settled.



Counsel for Plaintiffs (initially):

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702-385-7277

Counsel for Plaintiffs (later):

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Larson & Stephens  
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9. Selling Source, LLC v. Red River Ventures, LLC, et al., Case No. 2:09-cv-01491-JCM-GWF (United States District Court, District of Nevada, Judge James C. Mahan); 2010 – 2011.

Selling Source discovered that its database had been breached by defendant Red River, an entity affiliated with Selling Source's former employees: defendants Lane and Pope. Selling Source believed that the Defendants misappropriated Selling Source's data and were using and selling the data for their own gain. Selling Source believed that Defendants told their counsel (who also represented Selling Source) of their illicit activities. Selling Source filed this lawsuit and obtained an injunction against Defendants to preserve the computers, servers and data. At that point, I substituted in as counsel for Selling Source. We engaged in extensive investigation and written discovery, preparation of expert reports and motion practice. The parties briefed and argued whether Selling Source would be allowed to depose Defendants' counsel. Arguments focused on the crime/fraud exception to the attorney-client privilege and the ethical issues involved in an attorneys' joint representation of two clients. The court permitted the deposition to proceed. Two lawyers were deposed in the case. Eventually, the case settled before trial.

Counsel for Defendants Red River Ventures, LLC, Pope, and Lane:

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Counsel for Defendant Jones:  
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 Ellis & Gordon  
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 702-385-3727

10. In re Venetian Lien Litigation; Scott Company of California v. Venetian Casino Resort, Case No. A397391 (Eighth Judicial District Court, Senior Judge James Brennan) (lead case in consolidated proceedings); 1999 – 2004.

My client, Scott Company, was a subcontractor on the construction of the Venetian Casino Resort, Grand Canal Shops retail mall, and related improvements. Scott Company was not fully paid for its work and materials, so it recorded a lien against the subject properties and filed a Complaint to foreclose on its lien. The general contractor and numerous other subcontractors also recorded millions of dollars worth of liens, and filed Complaints. The cases were consolidated into one massive proceeding and a special master was appointed. The parties engaged in years of investigation, discovery, motion practice, and expert-related work. Ultimately, I and my firm withdrew from representation of Scott Company.

Lead counsel for Venetian Casino Resort Grand Canal Shops Mall Construction:  
 J. Stephen Peek, Esq.  
 Holland & Hart LLP

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Samuel Lionel, Esq.  
Lionel Sawyer & Collins  
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Lead counsel for Lehrer McGovern Bovis, Inc. and many of the subcontractors:  
Kirk R. Harrison, Esq.  
Richard F. Scotti, Esq.  
Kemp Jones & Coulthard, LLP  
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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have served on a number of federal court and state bar committees. In 2001, I was appointed by the court as a Lawyer Representative to the Ninth Circuit Conference. In that capacity, I served on various committees with the District and Magistrate Judges, and acted as a liaison between the bench and the bar. After completing that three-year term, I was elected to a three-year term on the Ninth Circuit Lawyer Representative Coordinating Committee, eventually serving as Chair of the committee. During that time, I helped organize conferences for the District and Circuit Judges, and continued to serve on committees assisting the District of Nevada. I continue to sit on the District of Nevada's Civil Rules Subcommittee, helping revise the court's Local Rules. I also have spent considerable time on committees of the State Bar of Nevada, editing and overseeing production of practice manuals (including the Nevada Jury Instructions (Civil) and Nevada Appellate Manual), and organizing Continuing Legal Education seminars.

In the last ten years, I have expanded my practice to include serving as a private arbitrator and mediator on a variety of cases. In addition, I serve as a pro bono mediator for the United States District Court's Inmate Mediation program, which attempts to resolve lawsuits filed by inmates at an early stage.

In 1995, I registered as a lobbyist with the Nevada State Legislature. I appeared before the Nevada State Senate Committee on Taxation on June 1 and 8, 1995, on behalf of my

client, the Sun City Summerlin Community Association, Inc. I testified regarding Senate Bill 512, which related to the assessment of taxes for units in common-interest communities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not anticipate receiving any deferred income other than from my 401(k) retirement plan.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If I am confirmed, I have no plans, commitments or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My father and three of my siblings (and two of their spouses) are lawyers, although only three of them practice in Nevada. I would recuse myself from matters in which they are involved. In addition, for at least several years I would recuse myself from any case in which my law firm (McDonald Carano Wilson LLP) represents a party. Finally, cases involving my former clients may present a potential conflict of interest. I would follow the recusal statutes and the Code of Conduct for United States Judges, and recuse myself whenever necessary to avoid the appearance of a conflict of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will resolve all matters involving actual or potential conflicts of interest through the careful application of the Code of Conduct for United States Judges and all relevant statutes. In case of uncertainty, I will err on the side of recusal to avoid any appearance of impropriety.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have consistently complied with Nevada Supreme Court Rule 6.1, Nevada's pro bono rule. I have satisfied these obligations in a variety of ways. In prior years, I represented participants in adoption proceedings, and I worked with a team of lawyers representing an inmate on death row in a habeas corpus proceeding. I have provided legal advice and handled minor legal matters for various non-profit organizations on a pro bono basis, primarily involving compliance with state laws, corporate registration, and employment issues. I currently serve as a pro bono mediator for the United States District Court's Inmate Mediation pilot program, helping to resolve lawsuits filed by prison inmates. I also have satisfied Rule 6.1 by participation in activities for improving the law, the legal system, or the legal profession through significant service to the Nevada State Bar and the United States District Court. For instance, I have helped produce and edit Nevada State Bar manuals on Appellate Practice and Family Law, and the Nevada Jury Instructions - Civil.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so,

please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On March 30, 2012, I met with Senator Harry Reid, who asked me if I had an interest in becoming a United States District Judge. I am not aware of how I came to his attention for such a position. On May 22, 2012, his staff informed me that Senator Reid would recommend me to the White House for consideration. Since May 23, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 22, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 19, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Gordon, Andrew P.	<b>2. Court or Organization</b> U.S. District Court, Nevada	<b>3. Date of Report</b> 09/19/2012
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> U.S. District Judge	<b>5a. Report Type (check appropriate type).</b> <input checked="" type="checkbox"/> Nomination      Date 09/19/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2011 to 09/07/2012
<b>7. Chambers or Office Address</b> McDonald Carano Wilson LLP 2300 West Sahara Avenue, Suite 1000 Las Vegas, Nevada 89102		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	McDonald Carano Wilson LLP
2.	Trustee	Trust #1
3.	Member, Board of Trustees	Southern Nevada Sports Hall of Fame
4.		
5.		

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**

Page 2 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

**III. NON-INVESTMENT INCOME** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	McDonald Carano Wilson LLP - draw and bonuses for legal work	\$547,448.00
2. 2011	McDonald Carano Wilson LLP - draw and bonuses for legal work	\$372,887.00
3. 2011	National Institute for Trial Advocacy - teaching	\$3,000.00
4. 2012	McDonald Carano Wilson LLP - draw and bonuses for legal work	\$180,000.00
5. 2012	National Institute for Trial Advocacy - teaching	\$1,800.00

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2011	Faith Lutheran Middle School & High School - salary
2. 2012	Faith Lutheran Middle School & High School - salary
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE (No reportable reimbursements.)

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	exempt				
2.					
3.					
4.					
5.					



**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
 Page 4 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 14-66 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Trust #1	A	Interest	K	T	Exempt				
2. Wells Fargo (Cash Account)									
3. Wells Fargo (Cash Accounts)	A	Interest	K	T					
4. Merrill Lynch (Cash Accounts)	B	Interest	O	T					
5. Abbott Labs stock	A	Dividend	J	T					
6. American Funds EuroPacific Growth Fund R5	A	Dividend	K	T					
7. Bank of Montreal stock	A	Dividend	J	T					
8. BlackRock Fixed Income Value Opportunities Fund	C	Dividend	K	T					
9. BlackRock Muni Intermediate Duration Fund	B	Dividend	K	T					
10. BlackRock Muniyield Quality Fund	B	Dividend	K	T					
11. Calamos Strategic Total Return Fund	A	Dividend	J	T					
12. Dodge & Cox Stock Fund	A	Dividend	K	T					
13. Enbridge Energy Partners, L.P. stock	C	Dividend	K	T					
14. Fidelity National Information Services stock	A	Dividend	K	T					
15. Hospira, Inc. stock		None	J	T					
16. Intel Corp. stock	A	Dividend	J	T					
17. Invesco Real Estate Fund	A	Dividend	K	T					

1. Income Unit Codes: (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 S - Assessment W - Estimated	D - \$5,001 - \$15,000 I1 - \$1,000,001 - \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 Y - Cash Market	E - \$15,001 - \$50,000 I2 - More than \$5,000,000
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## FINANCIAL DISCLOSURE REPORT

Page 5 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					(5) Identity of buyer/seller (if private transaction)
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)		
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)		
18. iShares Dow Jones US Consumer Goods Sector Index Fund	B	Dividend	K	T						
19. iShares MSCI EAFE Index Fund	A	Dividend	K	T						
20. iShares MSCI Japan Index Fund	A	Dividend	J	T						
21. MFS Growth Allocation Fund Class C	A	Dividend	K	T						
22. MFS Moderate Allocation Fund Class C	B	Dividend	L	T						
23. Microsoft Corp. stock	B	Dividend	K	T						
24. Nuveen Intermediate Duration Municipal Bond Fund	A	Dividend	J	T						
25. Templeton Developing Markets Trust	A	Dividend	K	T						
26. Templeton Growth Fund	A	Dividend	J	T						
27. Vanguard Dividend Appreciation ETF	B	Dividend	K	T						
28. Vanguard LifeStrategy Conservative Growth Fund	E	Dividend	O	T						
29. Walt Disney stock	A	Dividend	J	T						
30. Western Asset Emerging Markets Debt Fund	A	Dividend	J	T						
31. California PUB WKS BRD LSE REV D RF OID NPFG APR04 03.25%DEC	A	Interest	J	T						
32. Illinois ST College Savings 6.2%CI RF OCT92 00.00%AUG01 13	A	Interest	J	T						
33. Middlesex, NJ IMPT UTL RV 5.08%CI SER B GUAR AMBAC JAN99 00	A	Interest	K	T						
34. Texas ST TPK AT CENT TX REV 4.47% CI SER A AMBAC AUG02 00.00	A	Interest								

1. Income Gain Codes: (See Columns B4 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 PT = \$25,000,001 - \$50,000,000 Q = Appraisal (See Column C2)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 I = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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## FINANCIAL DISCLOSURE REPORT

Page 6 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

## VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of spouse and dependent children; see pg. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. ML Systematic Momentum Futures Access LLC Class C		None	K	T					
36. Bank of America SRN Linked to the Investable Volatility Inde		None	J	T					
37. Franklin Templeton Age-Based 529 - Age 9-12 Aggressive		None	K	T					
38. Franklin Templeton Age-Based 529 - Age 17+ Aggressive		None	K	T					

1. Income Code	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Column B1 and D1)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = More than \$5,000,000	
2. Value Code	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Column C1 and D1)	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Code	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

**FINANCIAL DISCLOSURE REPORT**

Page 7 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

## FINANCIAL DISCLOSURE REPORT

Page 8 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	09/19/2012

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Andrew P. Gordon

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-304  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		858	577	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule	1	354	281	Notes payable to relatives			
Unlisted securities - see schedule		132	038	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		256	620
Real estate owned - see attached		570	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		256	620
				Net Worth	2	758	776
Total Assets	3	015	396	Total liabilities and net worth	3	015	396
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts		8	000	Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

Abbott Labs stock	\$ 11,783
American Funds EuroPacific Growth Fund R5	35,126
Bank of Montreal stock	13,422
BlackRock Fixed Income Value Opportunities Fund	26,877
BlackRock Muni Intermediate Duration Fund	22,035
BlackRock Muniyield Quality Fund	21,672
Calamos Strategic Total Return Fund	10,010
Dodge & Cox Stock Fund	22,594
Enbridge Energy Partners, L.P. stock	45,297
Fidelity National Information Services stock	23,120
Hospira, Inc. stock	612
Intel Corp. stock	12,891
Invesco Real Estate Fund	27,800
iShares Dow Jones US Consumer Goods Sector Index Fund	48,255
iShares MSCI EAFE Index Fund	17,466
iShares MSCI Japan Index Fund	12,410
MFS Growth Allocation Fund Class C	22,819
MFS Moderate Allocation Fund Class C	52,716
Microsoft Corp. stock	21,270
Nuveen Intermediate Duration Municipal Bond Fund	10,473
Templeton Developing Markets Trust	24,398
Templeton Growth Fund	14,825
Vanguard Dividend Appreciation ETF	37,168
Vanguard LifeStrategy Conservative Growth Fund	796,685
Walt Disney Co. stock	11,918
Western Asset Emerging Markets Debt Fund	10,639
Total Listed Securities	\$ 1,354,281

Unlisted Securities

California Public Works municipal bond	\$ 5,309
Illinois State College Savings municipal bond	4,943
Middlesex, NJ municipal bond	18,390
Systematic Momentum Futures Access LLC Class C	15,253
Bank of Amer. SRN Linked to the Investable Volatility Index	5,640
Franklin Templeton Age-Based 529 – Age 9-12 Aggressive	43,607
Franklin Templeton Age-Based 529 – Age 17+ Aggressive	38,896
Total Unlisted Securities	\$ 132,038

Real Estate Owned

Personal residence	\$ 515,000
Family residence (25% ownership)	55,500
Total Real Estate Owned	\$ 570,500



AFFIDAVIT

I, Andrew Patrick Gordon, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/19/12

(DATE)

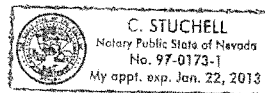
*AG*

(NAME)

*Subscribed & sworn to  
before me this 19th day  
of Sept., 2012*

*C. Stuchell*

(NOTARY)





McDONALD·CARANO·WILSON<sup>LLP</sup>

**Andrew P. Gordon, Esq.**  
[agordon@mcdonalddcarano.com](mailto:agordon@mcdonalddcarano.com)

January 7, 2013

Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 21, 2012 to be United States District Judge for the District of Nevada. Incorporating the additional information below, I certify that, as supplemented below, the information contained in that document is, to the best of my knowledge, true and accurate.

- My service as a Trustee for the Desert Spring United Methodist Church ended on December 31, 2012. Beginning January 1, 2013, I am now the Chair of the Church Counsel. (Questions 6 and 11(a)).

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Cordially,

Andrew P. Gordon

APG/cas  
Enclosure  
Cc: The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

100 WEST LIBERTY ST., 10<sup>TH</sup> FLOOR  
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702-873-4100  
FAX 702-873-9966

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Gordon, Andrew P.	<b>2. Court or Organization</b> U.S. District Court, Nevada	<b>3. Date of Report</b> 01/03/2013
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> U.S. District Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2012 to 12/23/12
<b>7. Chambers or Office Address</b> McDonald Carano Wilson LLP 2300 West Sahara Avenue, Suite 1000 Las Vegas, Nevada 89102		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Partner	McDonald Carano Wilson LLP
2. Trustee	Trust #1
3. Member, Board of Trustees	Southern Nevada Sports Hall of Fame
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 8

Name of Person Reporting	Date of Report
Gordon, Andrew P.	01/03/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	McDonald Carano Wilson LLP - draw and bonuses for legal work	\$372,887.00
2. 2011	National Institute for Trial Advocacy - teaching	\$3,000.00
3. 2012	McDonald Carano Wilson LLP - draw and bonuses for legal work	\$240,000.00
4. 2012	National Institute for Trial Advocacy - teaching	\$3,600.00

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2012	Faith Lutheran Middle School & High School - salary
2.	
3.	
4.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 8

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Gordon, Andrew P.	01/03/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Gordon, Andrew P.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Trust #1	A	Interest	K	T	Exempt				
2. Wells Fargo (Cash Account)									
3. Wells Fargo (Cash Accounts)	A	Interest	K	T					
4. Charles Schwab (Cash Accounts)	B	Interest	O	T					
5. Abbott Labs stock	A	Dividend	J	T					
6. American Funds EuroPacific Growth Fund R5	A	Dividend	K	T					
7. Bank of Montreal stock	A	Dividend	J	T					
8. BlackRock Fixed Income Value Opportunities Fund	C	Dividend	K	T					
9. BlackRock Muni Intermediate Duration Fund	B	Dividend	K	T					
10. BlackRock Muniyield Quality Fund	B	Dividend	K	T					
11. Calamos Strategic Total Return Fund	A	Dividend	J	T					
12. Dodge & Cox Stock Fund	A	Dividend	K	T					
13. Enbridge Energy Partners, L.P. stock	C	Dividend	K	T					
14. Fidelity National Information Services stock	A	Dividend	K	T					
15. Hospira, Inc. stock		None	J	T					
16. Intel Corp. stock	A	Dividend	J	T					
17. Invesco Real Estate Fund	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D3)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Gordon, Andrew P.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. iShares Dow Jones US Consumer Goods Sector Index Fund	B	Dividend	L	T					
19. iShares MSCI EAFE Index Fund	A	Dividend	K	T					
20. iShares MSCI Japan Index Fund	A	Dividend	J	T					
21. MFS Growth Allocation Fund Class C	A	Dividend	K	T					
22. MFS Moderate Allocation Fund Class C	B	Dividend	L	T					
23. Microsoft Corp. stock	B	Dividend	K	T					
24. Nuveen Intermediate Duration Municipal Bond Fund	A	Dividend	J	T					
25. Templeton Developing Markets Trust	A	Dividend	K	T					
26. Templeton Growth Fund	A	Dividend	K	T					
27. Vanguard Dividend Appreciation ETF	B	Dividend	K	T					
28. Vanguard LifeStrategy Conservative Growth Fund	E	Dividend	O	T					
29. Walt Disney stock	A	Dividend	J	T					
30. Western Asset Emerging Markets Debt Fund	A	Dividend	J	T					
31. California PUB WKS BRD LSE REV D RF OID NPFG APR04 03.25%DEC	A	Interest	J	T					
32. Illinois ST College Savings 6.2%CI RF OCT92 00.00%AUG01 13	A	Interest	J	T					
33. Middlesex, NJ IMPT UTL RV 5.08%CI SER B GUAR AMBAC JAN99 00	A	Interest	K	T					
34. Texas ST TPK AT CENT TX REV 4.47% CI SER A AMBAC AUG02 00.00	A	Interest							

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Column C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Gordon, Andrew P.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(XY)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. ML Systematic Momentum Futures Access LLC Class C		None	J	T					
36. Bank of America SRN Linked to the Investable Volatility Inde		None	J	T					
37. Franklin Templeton Age-Based 529 - Age 9-12 Aggressive		None	K	T					
38. Franklin Templeton Age-Based 529 - Age 17+ Aggressive		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	



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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Gordon, Andrew P.	01/03/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Andrew P. Gordon**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		871	591	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule	1	384	320	Notes payable to relatives			
Unlisted securities -- see schedule		132	911	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- personal residence		255	510
Real estate owned -- see attached		570	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		255	510
				Net Worth	2	803	812
Total Assets	3	059	322	Total liabilities and net worth	3	059	322
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts		8	000	Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

Abbott Labs stock	\$ 11,867
American Funds EuroPacific Growth Fund R5	38,607
Bank of Montreal stock	14,278
BlackRock Fixed Income Value Opportunities Fund	26,678
BlackRock Muni Intermediate Duration Fund	21,242
BlackRock Muniyield Quality Fund	21,350
Calamos Strategic Total Return Fund	10,006
Dodge & Cox Stock Fund	24,070
Enbridge Energy Partners, L.P. stock	43,390
Fidelity National Information Services stock	25,929
Hospira, Inc. stock	578
Intel Corp. stock	11,072
Invesco Real Estate Fund	27,510
iShares Dow Jones US Consumer Goods Sector Index Fund	50,051
iShares MSCI EAFE Index Fund	19,076
iShares MSCI Japan Index Fund	13,186
MFS Growth Allocation Fund Class C	23,638
MFS Moderate Allocation Fund Class C	54,126
Microsoft Corp. stock	19,271
Nuveen Intermediate Duration Municipal Bond Fund	10,583
Templeton Developing Markets Trust	26,757
Templeton Growth Fund	16,238
Vanguard Dividend Appreciation ETF	38,476
Vanguard LifeStrategy Conservative Growth Fund	813,461
Walt Disney Co. stock	12,072
Western Asset Emerging Markets Debt Fund	10,808
Total Listed Securities	<u>\$ 1,384,320</u>

Unlisted Securities

California Public Works municipal bond	\$ 5,247
Illinois State College Savings municipal bond	4,964
Middlesex, NJ municipal bond	18,621
Systematic Momentum Futures Access LLC Class C	14,095
Bank of Amer. SRN Linked to the Investable Volatility Index	3,315
Franklin Templeton Age-Based 529 – Age 9-12 Aggressive	46,149
Franklin Templeton Age-Based 529 – Age 17+ Aggressive	19,885
Franklin Templeton Age-Based 529 – Age 17+ Aggressive	20,635
Total Unlisted Securities	<u>\$ 132,911</u>

Real Estate Owned

Personal residence	\$ 515,000
Family residence (25% ownership)	55,500
Total Real Estate Owned	<u>\$ 570,500</u>

Senator WHITEHOUSE. Thank you very much, Mr. Gordon.  
 Commissioner Jackson, welcome, and you are recognized for any statement or acknowledgments you would care to make.

**STATEMENT OF KETANJI BROWN JACKSON, NOMINEE TO BE  
 DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Ms. JACKSON. Thank you, Mr. Chairman, and thank you, Members of the Committee, for your time this morning. I would also like to thank the Chair of the Senate Judiciary Committee and the Ranking Member for scheduling this hearing and the President of the United States for having confidence in me and for giving me this great honor.

My thanks also extends to Congresswoman Norton who honored me with those very kind words of introduction and who also selected me for recommendation to the President. And thanks as well to Representative Ryan. I am so grateful that he was able to take time out of his busy schedule to come here and provide his personal endorsement.

I do have a number of family members and friends who have come here today and many who are watching by Webcast, and I appreciate this opportunity to acknowledge them.

First is my husband of 16 years, Dr. Patrick Jackson. Patrick is a terrific surgeon, and he is my best friend and my biggest fan, and without his love and support, I do not think I would have had the courage to pursue this dream.

Patrick is here with our two daughters, Talia and Leila, who are getting quite the civics lesson this morning; and my parents, Johnny and Ellery Brown. They have been with me from the beginning, and they have always been there when I need them, and they have flown here from Miami to be with me today.

Also here is my brother, First Lieutenant Ketajh Brown, and I am particularly happy that he was able to be with us, because not too long ago he was stationed in the Sinai Peninsula and in Mosul, Iraq; before that he was an infantry officer in the Maryland Army National Guard.

Also here are my in-laws, Pamela and Gardner Jackson, who have flown here from Boston, Massachusetts; and my wonderful and supportive brother-in-law and sister-in-law, William and Dana Jackson.

To the many friends and family members who are watching by Webcast and the other friends who are here and watching, I appreciate your words of encouragement.

And, finally, I would just like to give a special word of gratitude to the three federal judges for whom I clerked: Judge Patti Saris, Judge Bruce Selya, and Justice Stephen Breyer. They have been my inspiration through this journey, and I am grateful every day for their continued mentorship and support.

Thank you.

[The biographical information of Ms. Jackson follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
Ketanji Brown Jackson (née Ketanji Onyika Brown)
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge for the District of Columbia
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002  
  
Residence: Bethesda, Maryland
4. **Birthplace:** State year and place of birth.  
  
1970; Washington, D.C.
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1993 – 1996, Harvard Law School; J.D. (*cum laude*), 1996  
1988 – 1992, Harvard University; B.A. (*magna cum laude*), 1992
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
2010 – Present  
United States Sentencing Commission  
One Columbus Circle, N.E.

Washington, D.C. 20002  
Vice Chair & Commissioner

2007 – 2010  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W., 6th Floor  
Washington, D.C. 20006  
Of Counsel

2005 – 2007  
Office of the Federal Public Defender  
625 Indiana Avenue, N.W.  
Washington, D.C. 20004  
Assistant Federal Public Defender

2003 – 2005  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Washington, D.C. 20002  
Assistant Special Counsel

2002 – 2003  
The Feinberg Group, LLP (now known as Feinberg Rozen, LLP)  
455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Associate

2000 – 2002  
Goodwin Procter LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Associate

1999 – 2000  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543  
Law Clerk for Associate Justice Stephen G. Breyer

1998 – 1999  
Miller, Cassidy, Larroca & Lewin LLP (now defunct)  
2599 M Street, N.W.  
Washington, D.C. 20007  
Associate

500

1997 -- 1998

United States Court of Appeals for the First Circuit  
1 Exchange Terrace  
Providence, Rhode Island 02903  
Law Clerk for the Honorable Bruce M. Selya

1996 -- 1997

United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, Massachusetts 02210  
Law Clerk for the Honorable Patti B. Saris

Summer 1996

Ropes & Gray LLP  
One International Place  
Boston, Massachusetts 02110  
Summer Associate

1996

Law Office of Nan Elder, J.D.  
90 Canal Street, 5th Floor  
Boston, Massachusetts 02114  
Intern

Summer 1995

Miller, Cassidy, Larroca & Lewin LLP (now defunct)  
2599 M Street, N.W.  
Washington, D.C. 20007  
Summer Associate

Summer 1994

Kirkland & Ellis LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022  
Summer Associate

1992 -- 1993

Time Magazine, Inc.  
1271 Avenue of the Americas  
New York, New York 10020  
Staff Reporter/Researcher



Other Affiliations (uncompensated):

2011 – present  
National Institute of Corrections  
320 First Street, N.W.  
Washington, D.C. 20534  
Advisory Board Member (appointed as designee of the Chair of the Sentencing Commission)

2010 – 2011  
Montrose Christian School  
5100 Randolph Road  
Rockville, Maryland 20852  
Advisory School Board Member

2004 – 2007  
Harvard Alumni Association  
124 Mount Auburn Street, 6th Floor  
Cambridge, Massachusetts 02138  
Elected Director

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register with the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

*Harvard Law Review* (Volume 109 Supervising Editor)  
Harvard College Scholarship for Academic Achievement (1989 – 1991)  
Elizabeth Carey Agassiz Certificate for Academic Achievement (1989 – 1990)  
Glamour Magazine's Top Ten College Women Competition, Semi-finalist (1991)  
National Catholic Forensic League National Champion in Original Oratory (1988)  
National Forensics League National Finalist in Humorous Interpretation (1988)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association  
American Law Institute

District of Columbia Bar  
 Courts, Lawyers and the Administration of Justice Section  
 Criminal Law and Individual Rights Section  
 Edward Bennett Williams Inn of Court  
 Barrister (2005 – present)  
 Supreme Court Institute, Georgetown University  
 Moot Court Jurist (2003 –2009)  
 United States District Court for the District of Columbia  
 Magistrate Judge Merit Selection Panel (2005)  
 Women’s Bar Association of the District of Columbia  
 Co-Chair, Amicus Committee (2006)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Massachusetts, 1996  
 District of Columbia, 1998

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2000  
 United States Court of Appeals for the Fourth Circuit, 2008  
 United States Court of Appeals for the District of Columbia Circuit, 2005  
 United States Court of Appeals for the First Circuit, 1998  
 United States District Court for the District of Columbia, 2009  
 United States District Court for the District of Massachusetts, 1997  
 United States Court of Federal Claims, 2008  
 District of Columbia Court of Appeals, 1998

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Harvard Alumni Association  
 Board of Directors (2004 – 2007)  
 Harvard Black Alumni Society (2003 – Present)  
 Harvard Club of Washington DC (2002 – Present)  
 Local College Interviewer (2004 – Present)  
 Montrose Christian School  
 Advisory School Board Member (2010 – 2011)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Ketanji Brown Jackson & Kathleen Cooper Grilli, "*Carrot and Stick*" *Philosophy: The History of the Organizational Sentencing Guidelines and the Emergence of Effective Compliance and Ethics Programs*, THE COMPLETE COMPLIANCE AND ETHICS MANUAL (Soc'y of Corporate Compliance & Ethics), Aug. 2012, at 1.25. Copy supplied.

*Section 10(b) and Rule 10b-5: The U.S. Courts of Appeals Apply Different Legal Tests for Assessing the Primary Liability of Secondary Actors*, Securities Litigation, Enforcement, and White Collar Criminal Defense Newsletter (Morrison & Foerster LLP), Spring 2009, at 10-12. Copy supplied.

Letter to the Editor, *Feder's as Racist as Those He Condemns*, Bos. Herald, April 10, 1997, at 36. Copy of letter and underlying editorial supplied.

Note, *Prevention Versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders*, 109 Harv. L. Rev. 1711 (1996). Copy supplied.

Recent Case, *Racketeer Influenced and Corrupt Organizations Act (RICO)—Scope of Liability After Reves v. Ernst & Young*, 108 Harv. L. Rev. 1405 (1995). Copy supplied.

"*The Hand Of Oppression*": *Plea Bargaining Processes and the Coercion of Criminal Defendants* (March 1992) (senior thesis on file with the Harvard College Archives). Copy supplied.

*It's About Time*, 4 Progressive Forensics 1, 18 (1987). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During the time that I have served as a Commissioner on the United States Sentencing Commission, the Commission has issued, on an annual basis, federal sentencing guidelines manuals, sourcebooks of federal sentencing statistics, and yearly reports. The Commission has also issued, on a periodic basis, reports on federal sentencing statistics. It is important to note that while members of the Commission contribute to these reports, they are representative of the Commission as a whole and not of any single Commissioner.

I have searched my files and electronic databases in an effort to locate all reports, memoranda, and policy statements responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2010 (July 2012). Available at [http://www.uscc.gov/Research/Research\\_Publications/2012/FY10\\_Overview\\_Federal\\_Criminal\\_Cases.pdf](http://www.uscc.gov/Research/Research_Publications/2012/FY10_Overview_Federal_Criminal_Cases.pdf).

United States Sentencing Commission, FY 2011 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at [http://www.uscc.gov/Publications/Annual\\_Reports\\_and\\_Statistical\\_Sourcebooks/index.cfm](http://www.uscc.gov/Publications/Annual_Reports_and_Statistical_Sourcebooks/index.cfm).

United States Sentencing Commission, Guidelines Manual (Nov. 2011). Available at [http://www.uscc.gov/Guidelines/2011\\_Guidelines/index.cfm](http://www.uscc.gov/Guidelines/2011_Guidelines/index.cfm).

United States Sentencing Commission. Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (Oct. 2011). Available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Mandatory\\_Minimum\\_Penalties/20111031\\_RtC\\_Mandatory\\_Minimum.cfm](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm).

National Institute of Corrections. Report to the Nation FY 2010 (June 2011). Available at <http://static.nicic.gov/Library/024837.pdf>.

United States Sentencing Commission. FY 2010 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at [http://www.ussc.gov/Data\\_and\\_Statistics/Archives.cfm](http://www.ussc.gov/Data_and_Statistics/Archives.cfm).

United States Sentencing Commission. Overview of Federal Criminal Cases. Fiscal Year 2009 (Dec. 2010). Available at [http://www.ussc.gov/Research/Research\\_Publications/2010/20101230\\_FY09\\_Overview\\_Federal\\_Criminal\\_Cases.pdf](http://www.ussc.gov/Research/Research_Publications/2010/20101230_FY09_Overview_Federal_Criminal_Cases.pdf).

United States Sentencing Commission. Guidelines Manual (Nov. 2010). Available at [http://www.ussc.gov/Guidelines/2010\\_Guidelines/index.cfm](http://www.ussc.gov/Guidelines/2010_Guidelines/index.cfm).

United States Sentencing Commission. Computation of "Recency" Criminal History Points Under USSG § 4A1.1(e) (Aug. 2010). Available at [http://www.ussc.gov/Research/Research\\_Publications/2010/20100818\\_Recency\\_Report.pdf](http://www.ussc.gov/Research/Research_Publications/2010/20100818_Recency_Report.pdf).

United States Sentencing Commission. Federal Offenders Sentenced to Supervised Release (July 2010). Available at [http://www.ussc.gov/Research/Research\\_Publications/Supervised\\_Release/20100722\\_Supervised\\_Release.pdf](http://www.ussc.gov/Research/Research_Publications/Supervised_Release/20100722_Supervised_Release.pdf).

United States Sentencing Commission. Results of Survey of United States District Judges, January 2010 through March 2010 (June 2010). Available at [http://www.ussc.gov/Research/Research\\_Projects/Surveys/20100608\\_Judge\\_Survey.pdf](http://www.ussc.gov/Research/Research_Projects/Surveys/20100608_Judge_Survey.pdf).

United States Sentencing Commission. Demographic Differences in Federal Sentencing Practices: An Update of the *Booker Report's* Multivariate Regression Analysis (Mar. 2010). Available at [http://www.ussc.gov/Research/Research\\_Publications/2010/20100311\\_Multivariate\\_Regression\\_Analysis\\_Report.pdf](http://www.ussc.gov/Research/Research_Publications/2010/20100311_Multivariate_Regression_Analysis_Report.pdf).

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

The Commission conducts public meetings and holds public hearings as a part of its annual amendment cycle. Congress also periodically requests information from the Commission, and the Commission provides letters or written statements in response. In addition, the Chair of the Commission periodically testifies on behalf of the Commission before various Congressional committees, and the Commission sometimes files *amicus* briefs in court. It is important to note that while members of the Commission contribute to the briefs, letters and other statements of the Commission, they are representative of the Commission as a whole and not of any single Commissioner.

I have searched my files and electronic databases in an effort to locate all testimony, official statements, or other communication responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

United States Sentencing Commission, Public Meeting (Aug. 17, 2012). Notice of meeting available at [http://www.uscc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120817/Notice.pdf](http://www.uscc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120817/Notice.pdf).

United States Sentencing Commission, Public Meeting (Apr. 13, 2012). Minutes available at [http://www.uscc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120413/Meeting\\_Minutes.pdf](http://www.uscc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120413/Meeting_Minutes.pdf).

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (March 14, 2012). Transcript available at [http://www.uscc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120314/Meeting\\_Transcript.pdf](http://www.uscc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120314/Meeting_Transcript.pdf).

United States Sentencing Commission, Public Hearing on Federal Sentencing Options after *Booker* (Feb. 16, 2012). Transcript available at [http://www.uscc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120215-16/Hearing\\_Transcript\\_20120216.pdf](http://www.uscc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Hearing_Transcript_20120216.pdf).

United States Sentencing Commission, Public Hearing on Federal Child Pornography Crimes (Feb. 15, 2012). Transcript available at [http://www.uscc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120215-16/Hearing\\_Transcript\\_20120215.pdf](http://www.uscc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Hearing_Transcript_20120215.pdf).

United States Sentencing Commission, Public Meeting (Jan. 10, 2012). Minutes available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20120110/Meeting\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120110/Meeting_Minutes.pdf).

United States Sentencing Commission, Report to Congress Regarding the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 (Dec. 14, 2011). Report available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Submissions/20111214\\_Iran\\_Sanctions\\_Transmission.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20111214_Iran_Sanctions_Transmission.pdf).

Prepared Statement of Patti B. Saris, Chair of the USSC, before the House Committee on the Judiciary Subcommittee of Crime, Terrorism, and Homeland Security (Oct. 12, 2011). Testimony available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Testimony/20111012\\_Saris\\_Testimony.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Testimony/20111012_Saris_Testimony.pdf).

United States Sentencing Commission, Public Meeting (Sept. 15, 2011). Minutes available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110915/Meeting\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110915/Meeting_Minutes.pdf).

United States Sentencing Commission, Public Meeting (June 30, 2011). Minutes available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110630/Meeting\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110630/Meeting_Minutes.pdf). Video available at <http://www.c-spanvideo.org/program/300289-1>.

United States Sentencing Commission, Public Hearing on the Possible Retroactivity of the New Guideline Amendments Implementing the Fair Sentencing Act of 2010 (June 1, 2011). Transcript available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110601/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110601/Hearing_Transcript.pdf).

United States Sentencing Commission, Public Meeting (Apr. 6, 2011). Minutes available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110406/Meeting\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110406/Meeting_Minutes.pdf).

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Mar. 17, 2011). Transcript available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110317/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110317/Hearing_Transcript.pdf).

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Feb. 16, 2011). Transcript available at

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110216/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110216/Hearing_Transcript.pdf).

United States Sentencing Commission, Public Meeting (Jan. 11, 2011). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110111/Meeting\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110111/Meeting_Minutes.pdf).

United States Sentencing Commission, Public Meeting (Oct. 15, 2010). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20101015/20101015\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20101015/20101015_Minutes.pdf).

United States Sentencing Commission, Public Meeting (Sept. 16, 2010). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100916/20100916\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100916/20100916_Minutes.pdf).

United States Sentencing Commission, Public Meeting (Sept. 1, 2010). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100901/20100901\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100901/20100901_Minutes.pdf).

United States Sentencing Commission, Public Hearing on the Issue of Statutory Mandatory Minimum Penalties in Federal Sentencing (May 27, 2010). Transcript available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100527/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100527/Hearing_Transcript.pdf).

United States Sentencing Commission, Public Meeting (Apr. 13, 2010). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100413/20100413\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100413/20100413_Minutes.pdf).

United States Sentencing Commission, Public Meeting (Apr. 7, 2010). Minutes available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100407/20100407\\_Minutes.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100407/20100407_Minutes.pdf).

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Mar. 17, 2010). Transcript available at [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20100317/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100317/Hearing_Transcript.pdf).

United States Sentencing Commission, Brief for the Commission as amicus curiae filed in the Supreme Court of the United States in the case of *Percy v. Dillon*, No. 09-6338 (Mar. 2010). Brief supplied.



On October 7, 2009, I testified before the United States Senate Judiciary Committee as a nominee to be a Member of the United States Sentencing Commission. Testimony and responses to questions for the record supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

July 26, 2012: Panelist, National Association of Black Narcotic Agents, 35th Annual Training Conference (Washington, D.C.). I participated in a panel discussion about the death of basketball player Len Bias and its impact on national criminal justice and sentencing policy related to drug offenses. Notes supplied.

June 13-15, 2012: Panelist and moderator, U.S. Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines (New Orleans, LA). I participated in a plenary panel of Commission members that provided attendees with data and information about the recent guideline amendments. I also moderated a breakout session in which panelists discussed current sentencing-related issues and the future of federal sentencing. Notes supplied.

May 24, 2012: Panelist, Federal Bar Association, Tampa Bay Chapter, 21st Annual National Seminar on the Federal Sentencing Guidelines (St. Petersburg, FL). I participated in a panel discussion about presentence reports and departures and variances from the federal sentencing guidelines. Outline supplied.

April 30, 2012: Guest Speaker, Health Care Compliance Association, Compliance Institute (Las Vegas, NV). I gave a speech about the state of the federal sentencing guidelines applicable to organizations before the members and attendees of the HCCA Compliance conference. Video available at <http://youtu.be/XFQ9DvKqH20>.

April 17, 2012: Panelist, NYU Center on the Administration of Criminal Law (New York, NY). I participated in a panel discussion about sentencing and reentry for the Center's conference on "New Frontiers in Race and Criminal Justice." Video available at <http://www.youtube.com/watch?v=QSxZd10HovU>.

March 12, 2012: Guest Lecturer, George Washington University Law School, Professors Aitan Goelman and Adam Hoffinger's Role of the Federal Prosecutor

Class (Washington, D.C.). I provided background information about federal sentencing practice and procedure, the operation of the Federal Sentencing Guidelines, and the institutional dynamics that govern federal sentencing policy. I used the same notes supplied in relation to the similar lecture on March 14, 2011.

February 28, 2012: Guest presenter, DC Class Field Trip sponsored by Professor Lisa McElroy of the Earl Mack School of Law at Drexel University (Washington, D.C.). I met with approximately 15 students in Professor McElroy's Supreme Court seminar to discuss my career and work-family balance issues. I have no notes, transcript, or recording. The address of the School of Law is 3141 Chestnut Street, Philadelphia, PA 19104.

October 28, 2011: Panelist, American Bar Association, Fourth Annual Sentencing & Reentry Institute and Criminal Justice Legal Educators Colloquium (Washington, D.C.). I participated in a panel that provided legislative and case law updates about the state of federal sentencing. I provided data and information regarding recent amendments to the Guidelines Manual (including the guideline amendments made pursuant to the Fair Sentencing Act) and the proposed priorities of the Commission. Notes supplied.

October 24, 2011: Speaker, Health Ethics Trust's 2011 Healthcare Best Compliance Practices Forum (Washington, D.C.). I gave a speech to compliance officers in the health care industry about the U.S. Sentencing Commission, its role in developing the federal sentencing guidelines applicable to organizations, and the ways in which the guidelines have led to the development of beneficial compliance and ethics standards in industries such as healthcare. Notes supplied.

September 28, 2011: Presenter, U.S. Sentencing Commission Training Program for the probation officers and U.S. District Judges of the Northern District of Illinois (Chicago, IL). I provided data, training, and information about the guideline amendments made pursuant to the Fair Sentencing Act and the procedures related to retroactive application of those amendments. I met informally with Commission staff and the district's chief probation officers to answer questions about the anticipated impact of the guideline changes. I gave a more formal lunchtime presentation to the judges of the U.S. District Court. Notes supplied.

June 15, 2011: Panelist, Sixth Circuit Judicial Conference (Acme, MI). I participated in a panel titled "Sentencing in the Sixth Circuit." I provided the judges with information about the 2011 guideline amendments, including the guideline amendments made pursuant to the Fair Sentencing Act, and the Commission's then-pending consideration of retroactivity. I also participated in general policy discussions about federal sentencing and provided Commission data about the rates of within-guideline sentences and departures and variances in the Circuit. Notes supplied.

June 14, 2011: Panelist, Ninth Circuit Federal Defenders Retreat (Big Fork, MT). I was on a panel titled "Update on Key Issues Before the United States Sentencing Commission and Criminal Rules Committee." I provided information about the 2011 guideline amendments, including the guideline amendments made pursuant to the Fair Sentencing Act, and the Commission's then-pending consideration of retroactivity. I also participated in general policy discussions about the future of federal sentencing and provided Commission data about the rates of within-guideline sentences and departures and variances in the Circuit. Notes supplied.

May 27, 2011: Commencement Speaker, Montrose Christian School (Rockville, MD). I delivered a commencement address to the members of the Class of 2011 encouraging them to reflect on their past, seek those who have supported them, and take the long view of their life and career as they move into the future. Speech supplied.

May 23, 2011: Guest Speaker, Morrison and Foerster LLP (Washington, D.C.). As an alumni of the firm, I gave informal remarks and professional recommendations to a small group of minority attorneys during the lunchtime segment of the firm's 2011 DC Attorneys of Color Workshop. Notes supplied.

May 18-20, 2011: Panelist and moderator, U.S. Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines (San Diego, CA). I participated in a plenary panel of Commission members that provided attendees with data and information about the recent guideline amendments. I also moderated a breakout session in which panelists discussed current sentencing-related issues and the future of federal sentencing. Notes supplied.

May 6, 2011: Panelist, Federal Bar Association, Tampa Bay Chapter Annual National Seminar on the Federal Sentencing Guidelines (Orlando, FL). I participated in a panel that provided legislative and case law updates on federal sentencing. I provided data and information regarding recent amendments to the Guidelines Manual, upcoming reports, and proposed priorities of the Commission. Notes supplied.

March 14, 2011: Guest Lecturer, George Washington University Law School, Professors Aitan Goelman and Adam Hoffinger's Role of the Federal Prosecutor Class (Washington, D.C.). I provided background information about federal sentencing practice and procedure, the operation of the Federal Sentencing Guidelines, and the institutional dynamics that govern federal sentencing policy. Notes supplied.

March 1, 2011: Guest presenter, DC Class Field Trip sponsored by Professor Lisa McElroy of the Earl Mack School of Law at Drexel University (Washington, D.C.). I met with approximately 15 students in Professor McElroy's Supreme Court seminar to discuss my career and work-family balance issues. I have no

notes, transcript, or recording. The address of the School of Law is 3141 Chestnut Street, Philadelphia, PA 19104.

February 11, 2011: Speaker, U.S. Sentencing Commission Training Program for federal judges, prosecutors, defense attorneys, and probation officers (Macon, GA). I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes supplied.

November 20, 2010: Panelist, Women's Bar Association of DC, Diversity Committee "Bootcamp: Real World Training for Future Success" (Washington, D.C.). I participated in a panel on professional advancement. I discussed work-family balance issues and provided advice about career development and professional ethics. I have no notes, transcript, or recording. The Women's Bar Association is located at 2020 Pennsylvania Avenue, N.W., Suite 446, Washington, D.C. 20006.

November 5, 2010: Panelist, American Bar Association Criminal Justice Section, Sentencing and Reentry Institute (Washington, D.C.). I participated in a breakout panel that provided legislative and case law updates on federal sentencing. I also participated in a plenary panel of Commission members that updated the audience about Commission activities. I provided data and information regarding recent amendments to the Guidelines Manual, Commission reports, and proposed priorities of the Commission. Notes supplied.

October 20, 2010: Speaker, U.S. Sentencing Commission Training Program for federal judges, prosecutors, defense attorneys, and probation officers (St. Thomas, VI). I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes and brochure supplied.

September 22, 2010: Speaker, U.S. Sentencing Commission Training Program for the law clerks and Staff Attorneys of the United States Court of Appeals for the Fourth Circuit (Richmond, VA). I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes supplied.

August 4, 2010: Panelist, Southeastern Association of Law Schools (SEALS) Annual Meeting and Conference (Palm Beach, FL). I gave a presentation about federal government programs related to prisoner reentry and alternatives to incarceration as part of an academic conference panel entitled "Rehabilitation or Restoration in Criminal Punishment: Dead End or Realistic Imperative?" Notes and PowerPoint slides supplied.

June 17, 2010: Panelist, U.S. Sentencing Commission, Annual National Seminar on the Federal Sentencing Guidelines (New Orleans, LA). I was part of a plenary "year in review" panel featuring the Commissioners of the U.S. Sentencing Commission. I have no notes, transcript, or recording. The U.S. Sentencing Commission is located at One Columbus Avenue, N.E., Suite 2-500, South Lobby, Washington, D.C. 20002.

May 14, 2010: Panelist, Federal Bar Association, Tampa Bay Chapter, Annual National Seminar on the Federal Sentencing Guidelines (St. Petersburg, FL). I participated in a panel that provided legislative and case law updates on federal sentencing. I provided data and information regarding recent amendments to the Guidelines Manual, upcoming reports, and proposed priorities of the Commission. Notes supplied.

November 10, 2009: Co-Presenter, Parent Encouragement Project (Kensington, MD). I planned and participated in a 15-minute presentation on diffusing parenting power struggles as the final assignment for a PEP leadership course. PowerPoint slides and notes supplied.

April 2, 2009: Guest Lecturer, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class (Washington, D.C.). I provided an overview of the content and structure of the Sentencing Guidelines and the Supreme Court's recent jurisprudence on sentencing, from *Booker* to *Kimbrough*. Notes supplied.

March 19, 2009: Faculty, Minority Corporate Counsel Association, CLE Expo (Chicago, IL). I gave a PowerPoint presentation about the inner workings of the Supreme Court to a breakout session of in-house counsel. I also participated in a related panel discussion regarding recent and pending Supreme Court cases of particular interest to business. PowerPoint presentation supplied.

January 9, 2008: Guest Speaker, American University, Professor Carolyn Cox Cohan's course on Women, The Law, & Litigating For Social Change (Washington, D.C.). I discussed my education and career path and work-family balance. I also provided insight into the Supreme Court and the role/work of law clerks. Notes supplied.

December 5, 2007: Panelist, American Constitution Society event at Jones Day (Washington, D.C.). I participated in a panel discussion regarding the representation of Guantanamo detainees and amici in cases before the Supreme Court. I have no notes, transcript, or recording. The American Constitution Society is located at 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

November 6-10, 2006: Presenter, Federal Defender Orientation Program (Santa Fe, NM). I co-taught a program session on the Armed Career Criminal Act and other recidivist sentencing enhancements. Outline supplied.

November 26, 2001: Guest Lecturer, Suffolk University Law School (Boston, MA). "Supreme Court As Gatekeeper: Screening Petitions for Original Writs of Habeas Corpus In The Wake of The AEDPA." I delivered an academic talk to the law school faculty regarding second and successive habeas petitions under AEDPA and the Supreme Court's original habeas authority. Notes supplied.

October 11-12, 1987: Original Orator, Sixth Annual William Faulkner Invitational High School Forensics Tournament (Oxford, MI). I delivered "*It's About Time*" in the first of many high school forensics tournaments at a local and national level as a senior member of the Miami Palmetto Senior High School speech and debate team. Speech supplied in response to Question 12a.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

On April 30, 2012, I was interviewed during a live radio RACMonitor program broadcast from the Health Care Compliance Association's Compliance Institute in Las Vegas and answered prepared questions regarding the U.S. Sentencing Commission's role in developing the federal sentencing guidelines for organizations. Notes supplied. Podcast available at <http://www.racmonitor.com/podcasts-mm/HCCA2ndshow.mp3> (from 34:05 to 44:04).

On November 19, 2008, I gave a telephone interview to Mark Sherman of the Associated Press regarding *Al-Marri v. Pucciarelli*. To my knowledge, there was no resulting article, and I do not have a transcript.

Elinor J. Brecher, *Dedicated Debate Legend Was an 'Unforgettable Hero'*, Miami Herald (Aug. 7, 2008). Copy supplied.

Kevin Merida & Michael A. Fletcher, *Justice Thomas's Life: A Tangle of Poverty, Privilege and Race*, Wash. Post (Apr. 22, 2007). Copy supplied.

On December 11, 2000, I was interviewed by CNN host Leon Harris after the U.S. Supreme Court stayed the Florida state supreme court's order requiring a statewide manual recount of the ballots cast in Florida during the Presidential election. DVD supplied.

*Harvard Students End Sit-In Protest, Demand More Afro-American Faculty*, Bos. Globe (Nov. 17, 1990). Copy supplied.

Jonathan Karp, *Palmetto Students Examine Their Values*, Miami Herald (Apr. 17, 1988). Copy supplied.

Teresa Smith, *Secretary is Grilled on Policies*, Miami Herald (Oct. 4, 1987).  
Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_%

bench trials: \_\_\_\_\_%

civil proceedings: \_\_\_\_\_%

criminal proceedings: \_\_\_\_\_%

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In September 2005, I was appointed to the Commission on Juvenile Justice in Montgomery County, Maryland by then-Montgomery County Executive Douglas Duncan and approved by the Montgomery County Council. I withdrew from the Commission shortly after my appointment due to a health issue involving a family member and never served.

On July 23, 2009, President Barack Obama nominated me to be a Commissioner on the United States Sentencing Commission. On February 12, 2010, following



my confirmation by the United States Senate, President Obama appointed me to be a Vice Chair of the Commission.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2008, I was an election poll monitor for both the primary and general elections on behalf of Lawyers for Change, Obama for America Presidential Campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the following three judges:

Hon. Patti B. Saris  
United States District Court for the District of Massachusetts  
1996 – 1997

Hon. Bruce M. Selya  
United States Court of Appeals for the First Circuit  
1997 – 1998

Associate Justice Stephen G. Breyer  
Supreme Court of the United States  
1999 – 2000

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practice law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1998 – 1999

Miller, Cassidy, Larroca & Lewin, LLP (now defunct)  
2599 M Street, N.W.  
Washington, D.C. 20007  
Associate

2000 – 2002

Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Associate

2002 – 2003

The Feinberg Group, LLP (now known as Feinberg Rozen, LLP)  
455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Associate

2003 – 2005

United States Sentencing Commission  
One Columbus Circle, N.E.  
Washington, D.C. 20002  
Assistant Special Counsel

2005 – 2007

Office of the Federal Public Defender  
625 Indiana Avenue, N.W.  
Washington, D.C. 20004  
Assistant Federal Public Defender

2007 – 2010

Morrison & Foerster, LLP  
2000 Pennsylvania Avenue, N.W., 6th Floor  
Washington, D.C. 20006  
Of Counsel

2010 – Present

United States Sentencing Commission  
One Columbus Avenue, N.E.  
Washington, D.C. 20002  
Vice Chair & Commissioner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

The nature of my law practice has varied widely over the years. From 1998 to 1999, I worked as a litigation associate at Miller, Cassidy, Larroca & Lewin LLP, a trial litigation boutique firm in Washington D.C. My work there involved a variety of civil subject matters, including commercial breach of contract actions, bankruptcy litigation, just compensation, and defense of corporate employment discrimination and retaliation claims.

In 2000, after my Supreme Court clerkship, I moved to Boston, Massachusetts and returned to private practice, joining Goodwin Procter LLP's litigation department. While at Goodwin, I worked on a variety of trial-stage litigation matters, drafting pleadings and handling discovery in cases involving federal securities fraud allegations, personal injury claims, breach of contract actions, and alleged violations of the Anti-Kickback statute. I also did pro bono work that involved assisting an organization in investigating and challenging high stakes testing in education, and drafting an amicus brief in a free speech case in the First Circuit.

In 2002, I returned to Washington D.C., and joined The Feinberg Group, a small arbitration and mediation practice, as an associate. While at the Feinberg Group, I assisted in the negotiated (non-litigation) resolution of mass tort claims. I attended arbitration proceedings and advised client corporations regarding trust payment structures for resolving mass-tort liability, such as asbestos claims.

From 2003 to 2007, I focused primarily on criminal law and criminal justice related issues. As an Assistant Special Counsel to the United States Sentencing Commission from 2003 to 2005, I drafted proposed amendments to the Sentencing Guidelines Manual, analyzed federal law and sentencing policies in regard to certain crimes, and worked on the development of various guideline-sentencing proposals prior to, and in anticipation of, *Booker*. Then, from 2005 to 2007, I served as an Assistant Federal Public Defender in the District of Columbia, during which I represented indigent criminal appellants in the United States Court of Appeals for the District of Columbia Circuit. I filed briefs and motions in the court of appeals, argued cases, and monitored criminal law developments nationwide.

In 2007, I joined Morrison & Foerster LLP in the District of Columbia and worked as an appellate litigator with a practice that can generally be characterized as a national appellate practice involving a wide range of legal issues. I drafted and filed briefs and petitions in the Supreme Court and in other appellate courts around the country. The cases that I worked on involved such matters as statutory interpretation, federal preemption, personal injury claims, federal wiretapping and fraud prosecutions, and civil contempt sanctions imposed by an administrative body. I also worked on pro bono matters involving complex legal issues, including an asylum application and briefs regarding the Fourth Amendment, federal habeas, and the right to an attorney in civil cases under state constitutional law.

Since joining the Sentencing Commission in 2010, my practice can generally be characterized as criminal justice policy. As a Commissioner of the federal agency that develops sentencing policy for the federal courts, I evaluate, draft, and enact proposed changes to the federal sentencing guidelines. I also participate in administrative hearings and meetings to assess the operation of the federal sentencing system.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my years in private practice at Miller, Cassidy, Larroca & Lewin, from 1998 to 1999, and Goodwin Procter, from 2000 to 2002, my clients were typically U.S. corporations, corporate executives, and non-profit organizations. I specialized in civil litigation, including trial-stage practice and procedure such as pleadings, motions practice, and discovery. My cases involved a variety of subject matters, including securities fraud, mortgage fraud, product liability, breach of contract, property law, the Fifth Amendment's takings clause, and Title VII.

When I was at The Feinberg Group from 2002 to 2003, my typical clients were large corporations facing mass tort liability. I specialized in mediation and arbitration procedures and in the evaluation of trust structures for the settlement of current and potential (future) tort claims.

As an Assistant Federal Public Defender from 2005 to 2007, I represented indigent individuals who had been convicted of federal crimes. I specialized in criminal law and procedure, the Fourth and Fifth Amendments, and federal appellate practice.

While at Morrison & Foerster from 2007 to 2010, I represented corporations, non-profit organizations, and a few individuals, all of whom were making legal arguments in state and federal courts of appeals. Typically, my clients were corporations or organizations that filed briefs

on the merits of a case as parties to an appeal or *amicus* briefs in support of a party in a case. I had the opportunity to work on both civil and criminal appeals, and appeals in courts throughout the country, including the Supreme Court of the United States.

In my work as a Commissioner on the United States Sentencing Commission since 2010, I represent the federal criminal justice system as a whole. The same is true of my former work as a Commission staffer from 2003 to 2005. I do not have clients, but I regularly consult with federal judges, members of Congress, prosecutors, defense counsel, and other criminal justice stakeholders nationwide about the structure and operation of the federal sentencing system. I specialize in criminal law and in the procedures of a federal district court judge during sentencing proceedings. I have also developed expertise in administrative procedure and the specific regulations (the federal sentencing guidelines) that federal district court judges use at sentencing.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At Miller, Cassidy, Larroca & Lewin, from 1998 to 1999, and Goodwin Procter, from 2000 to 2002, my practice was entirely civil litigation, but I did not appear in court. I appeared in court on a few occasions while at Morrison & Foerster from 2007 to 2010, including to argue a motion for summary judgment in a case in the United States Court of Federal Claims in 2009, to argue an appeal in the District of Columbia Court of Appeals in 2008, and to argue an appeal in the United States Court of Appeals for the District of Columbia Circuit in 2007.

As an Assistant Federal Public Defender, my practice was entirely criminal litigation in federal court. I appeared in court approximately ten times from 2005 to 2007, arguing appeals in the United States Court of Appeals for the District of Columbia Circuit.

At The Feinberg Group from 2002 to 2003, I assisted with mediations and arbitrations but did not appear in court. Likewise, as a Commissioner on the United States Sentencing Commission, since 2010, I do not appear in court, nor did I appear in court in my work as a Commission staffer from 2003 to 2005.

- i. Indicate the percentage of your practice in:
- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 75% |
| 2. state courts of record:  | 25% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:
1. civil proceedings: 40%
  2. criminal proceedings: 60%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not been primarily responsible for trying cases and have not handled any matters that were tried to verdict while I worked on them. From 1998 to 1999 and from 2000 to 2002, I was associate counsel in approximately 15 cases being litigated in state and federal courts. My responsibilities included pre-trial preparation (e.g., managing discovery, taking depositions, and drafting pre-trial pleadings and dispositive motions), and I also assisted with drafting motions in limine, proposed jury instructions, and proposed findings of fact and conclusions of law for cases that were scheduled to be tried. I was chief counsel in approximately 15 criminal appeals in the United States Court of Appeals for the District of Columbia Circuit from 2005 to 2007. From 2007 to 2010, I was chief or associate counsel in approximately 25 cases on appeal, representing clients in the filing of merits or *amicus* briefs and/or giving oral arguments.

- i. What percentage of these trials were:
1. jury: \_\_\_\_\_%
  2. non-jury: \_\_\_\_\_%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, *amicus* or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not argued before the Supreme Court, but I have appeared as counsel in the following cases:

*Bloate v. United States*, 130 S. Ct. 1345 (2010) (*amicus* brief on behalf of the National Association of Criminal Defense Lawyers in support of petitioner, 2009 WL 1864008).

*Arizona v. Gant*, 556 U.S. 332 (2009) (*amicus* brief on behalf of the National Association of Federal Defenders in support of respondent, 2008 WL 2958118).

*Al-Marri v. Spagone*, No. 08-368 (*amicus* brief on behalf of The Constitution Project, The Rutherford Institute, and the Cato Institute in support of petitioner on the merits, 2009 WL 230960; and *amicus* brief on behalf of The Constitution Project and The Rutherford Institute in support of petition for certiorari, 2008 WL 4735243).

*Boumediene v. Bush and Al-Odah v. United States*, 553 U.S. 723 (2008) (amicus brief on behalf of former federal judges in support of petitioners, 2007 WL 2441585).

*Quanta Computer, Inc. et al. v. LG Electronics, Inc.*, 553 U.S. 617 (2008) (amicus brief on behalf of Gen Probe, Inc. in support of petitioners, 2007 WL 3407025).

*United States v. Bussell*, No. 07-1262 (Apr. 3, 2008) (petition for certiorari, 2008 WL 960667; and reply brief, 2008 WL 2472925).

*Hall Street Associates LLC v. Mattel Inc.*, 552 U.S. 576 (2008) (respondent's merits brief, 2007 WL 2731409; supplemental brief, 2007 WL 4244685; and reply brief, 2007 WL 4254419).

*Clark County, Nevada v. Vacation Village, Inc.*, No. 07-373 (Nov. 19, 2007) (amicus brief on behalf of five air transportation-industry associations in support of petition for certiorari, 2007 WL 4142597).

*Kash v. United States*, No. 06-6128 (Aug. 23, 2006) (petition for certiorari). Copy supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Washington Gas Light Co. v. Public Service Commission of D.C.*, 982 A.2d 691 (D.C. 2009) (Farrell, Glickman, Kramer, JJ.)

I successfully represented Washington Gas Light Company with respect to a petition to the District of Columbia Court of Appeals seeking review of a \$350,000 civil forfeiture sanction that the Public Service Commission of the District of Columbia had imposed during the discovery phase of a rate proceeding as punishment for Washington Gas's alleged refusal to disclose documents as ordered by the Commission. I wrote the brief for petitioner and the reply brief, as well as two

supplemental briefs after oral argument. I also argued the case before a panel of judges on the District of Columbia Court of Appeals. The court concluded that the exhaustion requirements of the District of Columbia Code did not prevent its exercise of jurisdiction, and it reversed the Public Service Commission's forfeiture order on the ground that the agency lacked the statutory authority to adjudicate and impose the forfeiture penalty.

Co-counsel

Bernice K. McIntyre  
Washington Gas Light Company  
Office of the General Counsel  
101 Constitution Avenue, N.W.,  
Washington, D.C. 20080  
(202) 624-6112

Sherri N. Blount (formerly of Morrison & Foerster)  
Fitch, Even, Tabin & Flannery LLP  
One Lafayette Centre, Suite 750 South  
1120 20th Street, N.W.,  
Washington, D.C. 20036  
(202) 419-7000

Opposing counsel

Christopher Lipscombe  
D.C. Public Service Commission  
1333 H Street, N.W., #200W  
Washington, D.C. 20005  
(202) 626-9185

2. *Ladd v. United States*, No. 1:07-cv-271 (Fed. Cl., Oct. 14, 2009) (Hodges, J.)

I represented non-profit Rails-to-Trails Conservancy at a hearing on cross motions for summary judgment in a physical takings case in which the plaintiff landowners sought a legal declaration of ownership with respect to an abandoned railroad corridor. After being granted leave to participate, I prepared detailed exhibits and demonstratives and argued the motion for summary judgment on behalf of Rails-to-Trails as an amicus in support of the federal government. The court granted the government's motion for summary judgment, and denied the plaintiffs' cross motion, ruling that the railroad may negotiate with trail operators to transfer the corridor for public use pursuant to federal "railbanking" statutes without effecting a physical taking of plaintiff's reversionary rights in the property.

Co-counsel

Andrea Ferster  
Rails-to-Trails Conservancy



2121 Ward Court, N.W., 5th Floor  
Washington, D.C. 20037  
(202) 974-5142

James David Gette  
United States Department of Justice, Environment and Natural Resources Division  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-2701

Opposing counsel  
Mark F. ("Thor") Hearn, II  
Arent Fox LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 828-3447

3. *United States v. Littlejohn*, 489 F.3d 1335 (D.C. Cir. 2007) (Sentelle, Tatel, Brown, JJ.)

I successfully represented an individual defendant convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) in an appeal in the United States Court of Appeals for the District of Columbia Circuit. I argued, *inter alia*, that the evidence presented at trial was legally insufficient to support the conviction and that the trial court had conducted an improper and prejudicial jury *voir dire*. I wrote the brief for appellant and the reply brief and argued the case before a panel of judges on the D.C. Circuit. The judgment was vacated as a result of the district court's improper use of compound questions during *voir dire* and the case was remanded for a new trial.

Opposing counsel  
Sarah T. Chasson  
United States Attorney's Office for the District of Columbia  
555 Fourth Street, N.W., Room 8104  
Washington, D.C. 20530  
(202) 252-6829

4. *United States v. Ponds*, 454 F.3d 313 (D.C. Cir. 2006) (Rogers, Tatel, Brown, JJ.)

I successfully represented a former attorney convicted of tax evasion in an appeal that argued that the government's use of documents that it had compelled from the defendant pursuant to a subpoena and a grant of act-of-production immunity was improper under *United States v. Hubbell*, 530 U.S. 27 (2000). I wrote the brief for appellant and the reply brief, and I argued the case before a panel of judges on the United States Court of Appeals for the District of Columbia Circuit. The court vacated the judgment of conviction on the ground that my client's document

production was sufficiently testimonial to implicate his Fifth Amendment rights, and remanded the case to the district court for a determination of the extent of the government's impermissible use of the immunized material.

Opposing counsel

John P. Mannarino  
United States Attorney's Office for the District of Columbia  
555 Fourth Street, N.W., Room 8104  
Washington, D.C. 20530  
(202) 252-6781

5. *Khiali-Gul v. Bush*, No. 1:05-cv-877 (D.D.C., 2005) (Robertson, J.)

From 2005 to 2007, I represented a detainee seeking habeas review of his classification as an "enemy combatant" and his resulting detention at the United States Naval Station in Guantanamo Bay, Cuba. I drafted the petition for a writ of habeas corpus and filed it on behalf of the detainee. I also drafted and filed a series of substantive and procedural motions related to the matter, including a motion for a protective order, an opposition to the government's motion seeking permission to review privileged materials seized from detainees, and a motion for reconsideration of the court's order dismissing the case for lack of subject matter jurisdiction. I applied for and was granted Secret security clearance and reviewed classified documents related to this representation at a secure facility. The case was ultimately consolidated with other similar habeas actions and transferred to a different district court judge for coordination and management.

Co-counsel

Mary Manning Petras  
Office of the Federal Public Defender for the District of Columbia  
625 Indiana Avenue, N.W., Suite 550  
Washington, D.C. 20004  
(202) 208-7500

Opposing counsel

Terry Marcus Henry  
United States Department of Justice, Civil Division  
P.O. Box 883  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20044  
(202) 514-2000

6. *Council of the District of Columbia v. Washington Development Group*, No. 1998 CA 009875 (D.C. Super. Ct., 1998) (Mize, J.)

I co-defended a District of Columbia property developer and his development company in an action brought by the City Council of the District of Columbia to

enjoin the planned build-out of an historic building that the Council had leased as part of a real-estate development deal. I drafted pleadings, including the defendants' opposition to the plaintiff's motion for a preliminary injunction, and prepared related affidavits. I managed discovery, including witness statements and deposition testimony, and deposed a D.C. Councilmember during the discovery period. The parties ultimately settled and the case was dismissed with prejudice.

Co-counsel

Stephen Braga (former Miller, Cassidy, Larroca & Lewin partner)  
Ropes & Gray  
One Metro Center  
700 12th Street, N.W., Suite 900  
Washington, D.C. 20005  
(202) 508-4655

Opposing counsel

Eva Petko Esber  
Williams and Connolly  
725 12th Street, N.W.  
Washington, DC 20005  
(202) 434-5106

7. *Rutley-Lewis v. National Public Radio*, No. 1997 CA 006678 (D.C. Super. Ct., 1998) (Gardner, J.)

I was on a litigation team that defended National Public Radio in an action brought in the Superior Court of the District of Columbia by a former senior-level executive of the company who claimed discriminatory and retaliatory treatment in violation of the District of Columbia Human Rights Act. I assisted with managing fact and expert discovery. I also drafted the memorandum of law and supporting affidavits that were filed in support of defendant's motion for summary judgment. The case ultimately settled during trial.

Co-Counsel

Joe Caldwell and Bradford Berry (both formerly of Miller, Cassidy, Larroca & Lewin)  
Baker Botts  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
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Professor Richard Schragger (formerly of Miller, Cassidy, Larroca & Lewin)  
University of Virginia Law School  
580 Massie Road, Room WB177E  
Charlottesville, Virginia 22903  
(434) 924-3641

Opposing counsel

Devki K. Virk and Warren G. Kohlman  
Bredhoff & Kaiser PLLC  
805 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-2600

8. *United States v. McCants*, 434 F.3d 557 (D.C. Cir. 2006) (Randolph, Griffith, Edwards, JJ.)

I successfully represented an individual fraud defendant in an appeal in the United States Court of Appeals for the District of Columbia Circuit that challenged the district court's failure to make findings on contested factual issues at sentencing. I authored the brief for appellant and the reply brief and argued the case before a panel of judges on the D.C. Circuit. The judgment was reversed on the grounds that the district court's sentencing judgment failed to adhere to the requirements of the Federal Rules of Criminal Procedure and the case was remanded for resentencing.

Opposing counsel

Lisa H. Schertler (former AUSA)  
Schertler & Onorato, LLP  
575 Seventh Street, N.W., Suite 300 South  
Washington, D.C. 20004  
(202) 252-6829

9. *Hall Street Associates LLC v. Mattel Inc.*, 552 U.S. 576 (2008) (Souter, J., wrote the opinion for the Court)

From 2007 to 2008, I was part of a litigation team that represented respondent Mattel in a Supreme Court case involving the section of the Federal Arbitration Act that grants expedited judicial review to confirm, vacate, or modify an arbitration award. I was responsible for reviewing the factual record related to the subject matter of the underlying arbitration, and I drafted parts of both the primary brief for respondent and two supplemental briefs on specified issues as ordered by the Court. I also assisted in the preparation of oral argument counsel. The Court ultimately agreed with Mattel's argument that the Act's grounds for vacatur and modification of arbitration awards are exclusive for parties seeking expedited review under the FAA, but remanded the case for a determination regarding whether the parties did, in fact, intend for the arbitration proceeding at issue to be governed by the FAA.

Co-counsel

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Deputy Assistant Attorney General  
United States Department of Justice, Civil Division  
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Seth Galanter (formerly of Morrison & Foerster)  
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Opposing counsel  
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Schwabe, Williamson & Wyatt, P.C.  
1211 SW Fifth Avenue, Suites 1600-1900  
Portland, Oregon 97204  
(503) 222-9981

10. *Salvini v. Ski Lifts, Inc.*, 147 Wash. App. 1005 (Oct. 20, 2008) (Lau, Appelwick, Cox, JJ.)

I assisted in the representation of a defendant ski-area operator in its appeal of a \$14 million personal injury judgment won by a plaintiff who was injured while ski jumping in the operator's terrain park. I drafted parts of the brief for appellant and the reply brief, which argued, *inter alia*, that the trial court had improperly admitted prejudicial evidence of prior accidents and had erred in instructing the jury regarding the operator's duty, inherent risk, and adequate warnings. The judgment was affirmed.

Co-counsel  
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Opposing counsel

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 Law Offices of John R. Connelly, Jr.  
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 Tacoma, Washington 98403  
 (253) 593-5100

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activity that I have pursued, outside of the matters listed above, is my work at the United States Sentencing Commission, both as an Assistant Special Counsel on the staff from 2003 to 2005, and more recently as Vice Chair and Commissioner since 2010.

As an Assistant Special Counsel, my primary role was to draft specific legislative proposals for amending the Sentencing Guidelines Manual and to prepare drafts of the reports and statements that the Commission published in the Federal Register. I met regularly with other Commission staff members as a member of various policy development teams that evaluated potential guideline amendments related to crimes involving hazardous materials, unsolicited commercial e-mail, and controlled substances. I attended the Commission's public meetings and assisted in the preparation of materials for the Commissioners. I also evaluated case law developments and crafted a series of alternative guideline-sentencing proposals prior to, and in anticipation of, the Supreme Court's decision in *Booker v. United States*, 543 U.S. 220 (2005).

As a current Vice Chair and Commissioner, I work with Commission staff to evaluate, draft, and enact proposed changes to the federal sentencing guidelines that federal district court judges use to impose sentences on defendants in federal court. I prepare and deliver speeches and presentations about the federal sentencing system for criminal justice conferences and sentencing-related meetings, and I receive feedback from U.S. district judges, federal probation officers, and prosecutors and defense counsel regarding operation of the guidelines as applied. I also question witnesses at Commission hearings based on my review of submitted testimony, and I analyze data regarding operation of the guidelines system, including judicial guideline compliance and variance rates.

I have not performed lobbying activity on behalf of any client or organization, and I am not and have never been a registered lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught a Federal Sentencing Seminar at the George Washington University Law School in both Spring 2011 and Spring 2012. This course examines various aspects of federal sentencing policy and procedure. Syllabi supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no anticipated receipts or expected future benefits or compensation of any kind.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I plan to continue teaching the Federal Sentencing Seminar at the George Washington University Law School. Also, contingent upon the needs of the Commission, I may fulfill my term as a Commissioner of the United States Sentencing Commission, which ends October 31, 2013.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

No family members or other persons, parties, categories of litigation or financial arrangements are likely to present potential conflicts of interest for me.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I do not anticipate any conflicts of interest. If confirmed, I would handle any matters involving actual or potential conflicts of interest by applying the Code of Conduct for United States Judges and any other relevant ethical canons or rules.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From 2005 to 2007, I served as an Assistant Federal Public Defender, and as such, 100% of my time was devoted to the disadvantaged. In addition, approximately 15 to 20% of the time that I spent at each of the general litigation firms that I was affiliated with involved *pro bono* litigation work or services. As an example, I represented the American Bar Association in the filing of an amicus brief in a state supreme court case involving an indigent parent's right to counsel in child custody proceedings. Moreover, I successfully assisted in the preparation of an asylum petition for a pregnant juvenile who was a victim of sexual assault and illegal human trafficking, represented a civil rights organization in its evaluation of the effects and implications of high-stakes testing on the educational opportunities of students in low-income communities, and represented an indigent criminal defendant in filing appeal-related motions in the United States Court of Appeals for the Fourth Circuit.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 27, 2012, I submitted an application to Congresswoman Eleanor Holmes Norton's Federal Law Enforcement Nominating Commission. I interviewed with the Commission on February 21, 2012. As I understand it, the Commission forwarded my name, along with two others, to Delegate Norton for



her consideration. I met with Delegate Norton on April 9, 2012. Since May 16, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 2, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 20, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Jackson, Kelanji B.	2. Court or Organization U.S. District Court for the District of Columbia	3. Date of Report 09/20/2012
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 9/20/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2011 to 9/1/2012
7. Chambers or Office Address One Columbus Circle, N.E. Washington, DC 20002		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	09/20/2012

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	The George Washington University Law School - Teaching	\$3,000.00
2. 2011	The George Washington University Law School - Teaching	\$3,000.00
3. 2010	Morrison & Foerster LLP - Salary	\$40,643.00
4.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2012	Medstar- Salary
2. 2011	Medstar- Salary
3. 2011	LeClair Ryan LLC - medical consultant fees
4. 2011	DeLegge Medical Inc - medical consultant fees
5. 2011	Trustees of Dartmouth College - honoraria (\$ 1,000)

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	09/20/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

## FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	09/20/2012

## VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. IRA #1					Exempt				
2. -PRIMECAP Odyssey Growth	A	Int./Div.	J	T					
3. -Schwab Inst Large Cap Val Trust Fd Cls R	A	Int./Div.	J	T					
4. -Schwab Instl CorePlus Fixed Inc III	A	Int./Div.	K	T					
5. -Schwab S&P 500	A	Int./Div.	J	T					
6. -Janus Triton I	A	Int./Div.	J	T					
7. -Munder Veracity Small Cap Value Y	A	Int./Div.	J	T					
8. -Schwab Small Cap Index	A	Int./Div.	J	T					
9. -Vanguard Mid Cap Index Ins	A	Int./Div.	J	T					
10. -Artisan International Small Cap Inv	A	Int./Div.	J	T					
11. -Dodge & Cox International Stock	A	Int./Div.	J	T					
12. TIAA CREF Money Market Fund	A	Int./Div.	J	T					
13. Black Rock Money Market Class A	A	Int./Div.	J	T					
14. Black Rock Large Cap Core- Class A	A	Int./Div.	J	T					
15. NorthEast Investors Growth Fund	A	Int./Div.	J	T					
16. Fidelity Freedom K2035 Fund	E	Int./Div.	M	T					
17. PNC Checking accounts	A	Int./Div.	K	T					

1. Income Guide Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C) and D3)					
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value				

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	09/20/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Wells Fargo Checking Account		Int./Div.	K	T					
19.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less	B = \$1,001 - \$2,000	C = \$2,001 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$50,000,000	J = \$50,000,001 - \$500,000,000
3. Value Method Codes: (See Column C2)	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$500,000	N = \$500,001 - \$1,000,000	O = \$1,000,001 - \$5,000,000
	P = \$5,000,001 - \$25,000,000	Q = \$25,000,001 - \$50,000,000	R = \$50,000,001 - \$1,000,000	S = \$1,000,001 - \$5,000,000	T = \$5,000,001 - \$25,000,000
	U = Appraisal	V = Cost (Real Estate Only)	W = Assessment	X = Cash Market	Y = Other

FINANCIAL DISCLOSURE REPORT  
Page 6 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	04/20/2012

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

## FINANCIAL DISCLOSURE REPORT

Page 7 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	09/20/2012

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Ketanji B. Jackson

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		58	335	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		172	478	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence	1	138	927
Real estate owned - personal residence	1	395	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		34	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		169	622				
				Total liabilities	1	138	927
				Net Worth		690	508
Total Assets	1	829	435	Total liabilities and net worth	1	829	435
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
Artisan International Small Cap Fund	\$ 1,600
BlackRock Large Cap Core Fund	1,378
BlackRock Money Market Portfolio	1,298
Dodge & Cox International Stock Fund	4,246
Fidelity Freedom K-2035 Fund	111,658
Janus Triton Fund	2,705
Northeast Investors Growth Fund	1,734
Munder Veracity Small-Cap Value Fund	1,640
PRIMECAP Odyssey Growth Fund	5,060
Schwab Core Plus Fixed Income Trust Fund	17,182
Schwab Large Cap Value Trust Fund	4,996
Schwab S&P 500 Index Fund	10,506
Schwab Small Cap Index Fund	1,643
TIAA CREF Money Market Fund	4,694
Vanguard Mid-Cap Index Fund	2,138
Total Listed Securities	<u>\$ 172,478</u>

AFFIDAVIT

I, Ketanji Brown Jackson, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

September 24, 2012  
(DATE)

Ketanji Brown Jackson  
(NAME)

Jeffery N. Luthi  
(NOTARY)

JEFFERY N. LUTHI  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires April 01, 2019

UNITED STATES SENTENCING COMMISSION  
ONE COLUMBUS CIRCLE, N.E.  
SUITE 2-500, SOUTH LOBBY  
WASHINGTON, D.C. 20002-8002  
(202) 502-4500  
FAX (202) 502-4699

Ketanji Brown Jackson, Vice Chair



January 3, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 20, 2012, to be a United States District Court Judge for the District of Columbia. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

**Supplements to Q. 12 (b):**

- United States Sentencing Commission, Preliminary Crack Retroactivity Data Report (Dec. 2012). Available at [http://www.ussc.gov/Research\\_and\\_Statistics/Federal\\_Sentencing\\_Statistics/FSA\\_Amendment/2012-12\\_USSC\\_Crack\\_Retroactivity\\_Report\\_PostFSA.pdf](http://www.ussc.gov/Research_and_Statistics/Federal_Sentencing_Statistics/FSA_Amendment/2012-12_USSC_Crack_Retroactivity_Report_PostFSA.pdf)
- United States Sentencing Commission, Guidelines Manual (Nov. 2012). Available at [http://www.ussc.gov/Guidelines/2012\\_Guidelines/Manual\\_PDF/index.cfm](http://www.ussc.gov/Guidelines/2012_Guidelines/Manual_PDF/index.cfm)

**Supplements to Q. 12 (d):**

- October 26, 2012: Panelist, American Bar Association, Fifth Annual Sentencing & Reentry Institute and Criminal Justice Legal Educators Colloquium (Washington, DC). I participated in a panel that provided legislative and case law updates about the state of federal sentencing. I provided data and information regarding recent amendments to the Guidelines Manual, upcoming Commission reports, and the proposed priorities of the Commission. Notes supplied.

- October 23, 2012: Speaker, Health Ethics Trust's 2011 Healthcare Best Compliance Practices Forum (Alexandria, VA). I gave a speech to compliance officers in the health care industry about the historical development of the federal sentencing guidelines applicable to organizations, and the ways in which the guidelines have led to beneficial compliance and ethics standards in industries such as healthcare. Notes supplied.
- October 2, 2012: Panelist, Federal Judicial Center National Sentencing Policy Institute (Memphis, TN). I participated in a plenary panel of Commission members that provided attendees with data and information about recent Commission activities. Notes supplied.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ketanji Brown Jackson', with a long horizontal flourish extending to the right.

Ketanji Brown Jackson

Enclosures

cc:  
The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**ABA Fifth Annual Fall Institute:**  
**Sentencing – Reentry – Juvenile Justice – Legal Education**  
*Update on Federal Sentencing Law & Policy Panel*

Thank you. As many of you know, the U. S. Commission is an agency of the Judicial Branch that has many statutory responsibilities, including reviewing and updating the Guidelines, collecting and analyzing federal sentencing data, issuing reports, and advising Congress on federal sentencing matters. There are quite a few people on this panel with interesting things to say and not much time, and much of what I have to offer is technical (and tedious), so I will try to keep my remarks about the Commission's activities relatively brief.

My update for these purposes focuses on three areas in which there has been recent Commission activity:

1. The 2012 Guideline amendments;
2. The Commission's upcoming reports, one on the impact of the Supreme Court's *Booker* decision on federal sentencing law, and another on child pornography offenses; and
3. The Commission's other priorities for the upcoming amendment cycle.

### 2012 GUIDELINE AMENDMENTS

In April, the Commission promulgated proposed amendments to the federal sentencing guidelines addressing several areas. These amendments have a designated effective date of November 1, 2012, unless Congress affirmatively acts to modify or disapprove them. We don't have time to go through all of the promulgated amendments, but I want to take a few minutes to highlight three of the proposed 2012 amendments: *the amendments related to fraud, human rights offenses, and drug offenses*

#### **I. Fraud**

First, the Commission promulgated a multi-part amendment to the Guideline that governs fraud offenses (§2B1.1). The amendment responded to two directives to the Commission from Congress in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and it relates only to certain fraud offenses, *including* **securities fraud, mortgage fraud, insider trading, and financial institution fraud.**

##### 1. Securities Fraud

###### **A. New Loss Rule (§2B1.1, app. Note 3(f)(ix))**

In the context of securities fraud, the amendment creates a new rule for the determination of "loss" in offenses involving fraudulent inflation or deflation in the value of securities.

- a. The Commission was aware that determinations of loss in cases involving securities fraud can be complex and that a variety of inconsistent methods were being used by courts to make loss determinations in these types of cases.

- b. The amendment amends the application notes to 2B1.1 to provide a special rule that establishes a rebuttable presumption that the “modified rescissory method” of loss calculation should be used to determine the loss.

Under the modified rescissory method as set forth in the rule, loss is determined by

- a. calculating the difference between (a) the average price of the security during the period that the fraud occurred, and (b) the average price of the security during the 90-day period after the fraud was disclosed to the market, and then
  - b. multiplying that difference in average price by the number of shares outstanding
  - c. This new special rule is intended to provide courts with a workable and consistent formula for making the “reasonable estimate of the loss” that the guidelines require. And because the amount of loss calculated pursuant to the new rule may be *rebutted*, ~~it~~ also provides sufficient flexibility for a court to consider the extent to which the amount determined under the special rule is appropriate in a particular case.<sup>1</sup>
- B. Departure – Also in the context of securities fraud, the amendment adds an example to the departure provision at Section 2B1.1, Application Note 19(C).

<sup>1</sup> One instance in which the loss amount calculated using the modified rescissory method could be inappropriately overstated is where it includes significant changes in value not resulting from the offense—e.g., changes caused by external market forces, such as changed economic circumstances, changed investor expectations, and new industry-specific or firm-specific facts, conditions, or events.



- a. That application note states generally that there may be cases in which the offense level determined under 2B1.1 “substantially overstates the seriousness of the offense.”
- b. The proposed amendment provides as an example the situation in which “a securities fraud involves a fraudulent statement made publicly to the market” that results in a substantial aggregate loss amount but only because relatively small losses are suffered by a relatively large number of victims. The proposed departure language states that, “in such a case, the loss table in subsection (b)(1) and the victims table in subsection (b)(2) may combine to produce an offense level that substantially overstates the seriousness of the offense.”

2. Mortgage Fraud (§2B1.1):

As it relates to mortgage fraud, the proposed amendment amends the credits against loss rule in Application Note 3(E) of the commentary to §2B1.1.

- a. Under the credits against loss rule in the mortgage fraud context, the loss amount is reduced by the fair market value of the property returned to the victim. But in a case in which the property has not been disposed of by the time of sentencing, its fair market value can be very difficult to assess and can require frequent updating even after it has been determined.
- b. To avoid these difficulties, the new Application Note 3(E)(iii) creates a rebuttable presumption that in a mortgage fraud case in which the property has not been disposed of at the time of sentencing, the most recent tax assessment on the date of conviction or guilty plea is the fair market value.

- c. Significantly, this presumption is rebuttable. And the note also makes clear that, in determining whether the tax assessment is a reasonable estimate of the fair market value, the court may consider factors such as the recency of the tax assessment and the extent to which the jurisdiction's tax assessment practices reflect factors not relevant to fair market value.

3. Insider Trading (§2B1.4):

The 2012 amendments also include two changes to the Insider Trading guideline. (2B1.4)

- a. First, there is a new specific offense characteristic in 2B1.4 that sets a minimum offense level 14 if the offense involved “an organized scheme to engage in insider trading.”
  - i. The guideline provides several factors that the court may consider in determining whether the minimum offense level applies, including the number of transactions, the number of securities involved, the duration of the offense, and the extent of the defendant’s concealment efforts.
- b. The amendment also amends the commentary in the insider trading guideline to provide more guidance on the applicability of §3B1.3 (Abuse of Position of Trust or Use of Special Skill) in insider trading cases.
  - i. The commentary now clarifies that the §3B1.3 enhancement should be applied if the defendant was employed in a position that involved regular participation in securities trading, and used that position to facilitate significantly the commission or concealment of the offense.

#### 4. Financial Institution Fraud

Finally, with respect to financial institution fraud, there are amendments that are intended to assist the court in evaluating the extent to which the offense caused significant risks to the safety and soundness of a financial institution. The new language generally establishes that:

- a. In a situation in which the offense seriously threatened the soundness of a financial institution, and thus would be eligible for the 4-level enhancement at 2B1.1(b)(15)(B), but the risk did not materialize because of federal intervention (such as a bailout), the enhancement may nevertheless still apply, and
- b. The proposed amendment also adds upward departure language to account for a situation in which the offense caused a "risk of a significant disruption of a national financial market."

## II. **Human rights**

In the area of human rights, the Commission conducted a multi-year study of federal human rights offenses and promulgated a two-part amendment to the federal sentencing guidelines.

1. First, the amendment addresses defendants who are convicted of a violating a federal statute that prohibits substantive human rights crimes, including genocide, torture, war crimes, and the use or recruitment of child soldiers.
  - a. Because the Commission's review demonstrated that serious human rights offenses can be committed in a wide variety of ways (e.g., through murder, assault, or kidnapping), the Commission promulgated a new Chapter Three adjustment that applies to substantive human rights violators after the

court calculates the applicable offense level for the underlying conduct under Chapter 2.

- b. The new Chapter Three ~~enhancement~~<sup>adjustment</sup> provides two tiers of ~~enhancements~~<sup>adjustments</sup>, corresponding to the differing statutory maxima that apply to human rights offenses:
  - i. The adjustment generally provides a 4-level increase if the defendant was convicted of a serious human rights offense, and a minimum offense level of 37 if death resulted.
  - ii. But if the defendant was convicted of the offense of inciting genocide, which has a lower statutory maximum, the adjustment provides a 2-level increase rather than the 4 levels applicable to other offenses covered by this enhancement.
- 2. The second aspect of the new proposed human rights amendment addresses defendants who are convicted of immigration or naturalization fraud in an attempt to conceal involvement, or possible involvement, in a human rights offense.
  - a. The amendment adds a new specific offense characteristic to §2L2.2 at subsection (b)(4), and that new specific offense characteristic contains two subparagraphs.
    - i. Subparagraph (A) provides a 2-level increase and a minimum offense level of 13 if the defendant committed immigration fraud to conceal the defendant's membership in, or authority over, a military, paramilitary, or police organization that was involved in a serious human rights offense.
    - ii. If, however, the defendant committed immigration fraud to conceal the defendant's *participation* in a

serious human rights offense, subparagraph (B) applies, and provides a 6-level increase if the offense was incitement to genocide, or a 10-level increase and minimum offense level of 25 if the offense was any other serious human rights offense.

### III. Drugs

Finally, the Commission promulgated two amendments related to drug offenses.

1. BZP: First, the Commission promulgated an amendment to the federal sentencing guidelines to address concerns raised by the Second Circuit Court of Appeals and others regarding the sentencing of offenders convicted of offenses involving the drug BZP.
  - a. BZP is a Schedule I stimulant that is used both alone and in combination with other chemicals to produce effects that mimic those of the drug “Ecstasy.”
  - b. The proposed amendment adds BZP to the list of chemicals covered by the federal sentencing guidelines by establishing a marijuana equivalency for BZP offenses in the Drug Equivalency Table provided in Application Note 10(D) of §2D1.1.
    - i. The amendment establishes that 1 gram of BZP = 100 grams of marijuana.
  - c. The Commission made this determination after a hearing and it is consistent with available scientific literature.

2. Safety Valve: The Commission also promulgated an amendment to §2D1.11 – the guideline that applies to the unlawful distribution of drug-precursor chemicals.
  - a. The amendment incorporates the established “safety valve” criteria in Chapter 5 of the guidelines, which currently reduce penalties under the guidelines for certain low-level, non-violent offenders convicted of drug offenses sentenced under 2D1.1

\* \* \*

So I will leave you with that as a brief summary of three of the proposed amendments that the Commission enacted this year. There are several others – a complete listing of the 2012 Amendments is available on the Commission’s website!

### UPCOMING REPORTS

The Commission anticipates issuing two major reports in the next few months. Both of these reports rely heavily on the Commission's data-gathering functions, so just as background for those of you who are not familiar with the agency, the Commission collects detailed information about each of the 80,000-plus cases in which defendants are sentenced in federal court every year. One of our upcoming reports synthesizes the data and provides information about the manner in which *United States v. Booker* and subsequent Supreme Court cases—which have rendered the guidelines effectively advisory rather than mandatory—have affected federal sentencing practices. The other report relies on the data to explain the state of federal sentencing in regard to child pornography offenses.

➤ **Booker Report**

- It has been nearly eight years since the Supreme Court issued the *Booker* decision (in 2005) and it is important to review the system again now because we now have a wealth of information about the operation of the system since the guidelines became advisory and also the Supreme Court has decided *seven* additional cases that impact the operation of advisory guidelines since our first *Booker* report (in 2006).

- In preparing this upcoming *Booker* report, the Commission is reviewing case law, analyzing sentencing data and studying scholarly literature. The Commission has sought the views of stakeholders in the federal criminal justice system in a variety of ways, including:
  - Conducting seven regional public hearings;
  - Holding an additional hearing on post-*Booker* sentencing in February of this year;
  - Formally surveying federal district judges;
  - Consulting with its advisory groups and representatives from all three branches of government.
- The upcoming report will compare data across four distinct time periods, marked by significant developments in federal sentencing law: ~~the Supreme Court's decision in *Koon*, the enactment of the PROTECT Act, the Supreme Court's decision in *Booker*, and the Supreme Court's decision in *Gall*.~~ *hearings, surveys, and a large consultation*
- It will also analyze the data that the Commission has collected with respect to the sentencing of cases falling into five major offense categories: immigration, drug trafficking, fraud, firearms, and child pornography.
- Significantly, the report will include district-level analysis, which was not included in the Commission's 2006 *Booker*



report. The report will also include multivariate analyses to examine whether differences in the length of sentences imposed on offenders are correlated with demographic characteristics of those offenders.

*As I said,  
this is intended  
to be a comprehensive  
analysis —  
this will be  
much in there,*

- ~~Other aspects of the report include:~~<sup>to</sup> data and case law specific to appellate review; a discussion of the viewpoints of the various stakeholders in the criminal justice system who have testified before the Commission, written opinions, or made statements regarding the current state of federal sentencing; and a ~~recounting~~<sup>reporting</sup> of the recommendations to Congress that the Commission's chair laid out in testimony to Congress earlier this year.

#### ➤ Child Pornography Report

The Commission is also working on a report on child pornography offenses, one area that has a very high variance rate. (The data indicate that in fiscal year 2011 the departure/variance rate for child pornography offenses was 44.9 percent.)

- Child pornography offenses, some of which have lengthy mandatory minimum penalties, are of great interest to the criminal justice community right now.
- In our January 2010 survey of federal judges, about 70 percent of judges responding felt that the guideline range for

possession of child pornography was too high. Similarly, 69 percent thought the guideline range for receipt of child pornography was too high.

- The report studies the offenders, the conduct involved in the offenses, the role of technology in these cases, and victims of these crimes.

**PRIORITIES**

In closing, I wanted to point out that the Commission has published specific priorities for this coming amendment cycle. I have already discussed the two reports. The other priorities include:

**Mandatory Minimums:** In 2011, the Commission issued a report to Congress regarding the operation of mandatory minimums in the current system, and the Commission intends to continue to work with Congress and other interested parties on the issues raised in that report.

**Economic Crime & Fraud Guideline:** The Commission is in the midst of a multi-year study of the operation of the guidelines that cover fraud and other economic crimes, and plans to continue this study, including examination of the loss table and the definition of loss used in these guidelines.

**Categorization of Prior Offenses for Career Offender/ACCA purposes (“Categorical Approach”):** The Commission is also in the midst of a multi-year study of the problems that have arisen in regard to categorizing prior offenses for the purpose of establishing career offender status (*i.e.*, identifying crimes of violence and the use of the categorical approach).

**Recidivism:** The Commission is beginning a multi-year, comprehensive study of recidivism, including examination of circumstances that correlate with increased or reduced recidivism,

possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons, and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

**Also listed:** circuit conflicts; implementing crime legislation; responding to *Setser*; other application issues.

\* \* \*

**Healthcare Best Compliance Practices Forum**  
Alexandria, VA, October 23, 2012

***“Carrot & Stick Philosophy”: The History of the Organizational Sentencing Guidelines***

Good morning. I am delighted to have been invited back to this year’s Best Compliance Practices Forum. When I spoke with you all last year, I talked generally about the United States Sentencing Commission (my agency), about the Federal Sentencing Guidelines for Organizations, and about the compliance program standards that are established in Chapter 8 of the Federal Sentencing Guidelines Manual.

This morning, I thought you might be interested in getting more detailed information about *how* the compliance program standards that you are so familiar with came into being – that is, I am going to speak about the *historical development* of the organizational guidelines and their philosophical underpinnings. Now, this is actually a really good time to look back at the creation and evolution of the organizational guidelines because last year the Federal Sentencing Guidelines for Organizations celebrated their twentieth anniversary. And while I ordinarily don’t dwell on timeframes, I recently (and reluctantly) acknowledged a twentieth anniversary of my own – a college reunion – so I can say with certainty that twenty years is a *long* time! The organizational sentencing guidelines have, indeed, reached a milestone, and I am happy to have this opportunity to be here with you—compliance professionals—to discuss how organizational sentencing

policy has developed and why it includes the promotion of effective compliance and ethics programs. This history is important not only because it informs the creation of effective compliance programs today, but also because it provides a good foundation for the consideration of future changes to Chapter 8 of the Guidelines Manual.

So, let's begin at the beginning . . . what *is* this agency called the United States Sentencing Commission, some of you may ask, and *why* did it develop sentencing guidelines for organizations?

## I. The USSC & the Need for Organizational Guidelines

The United States Sentencing Commission is a bipartisan, independent agency within the Judicial Branch of the federal government. Congress created the Commission in the Sentencing Reform Act of 1984, and the agency consists of seven voting commissioners who are nominated by the President, confirmed by the Senate, and supported by a staff of experts in various aspects of federal sentencing policy. As a general matter, the Commission was created to address concerns about inequitable sentencing practices in the federal courts, and, to that end, the Commission's primary statutory responsibility is to develop guidelines that federal judges use to impose similar sentences on defendants who commit similar crimes.

Now, as it turned out, the original Sentencing commissioners (the ones who were first appointed when the Commission was created in the mid-1980s) produced *two* sets of sentencing guidelines—one that applies to *individual* criminal defendants, and another that applies to all types of defendant *organizations*, including corporations, partnerships, trusts, unions, funds, non-profits, and governmental entities. The Commission worked from its creation in 1984 until 1987 to produce the guidelines that apply to individuals, and it took an additional *four years* to develop the guidelines that apply to organizations. Ultimately, in the fall of 1991—nearly twenty-one years ago—the Federal Sentencing Guidelines for Organizations were born.

Now, before I go any further, it is important to understand *why* it was so crucial to have sentencing guidelines that focused on organizations. The first reason is a *legal* one: as a matter of law, a corporation can be held criminally liable for the illegal conduct of its employees if those agents commit crimes within the scope of their employment and if they intend for their illegal activity to benefit the organization. The organization doesn't even have to *know* about the criminal activity, much less bless it; and indeed, the company can be held criminally responsible even if the employee acted without authorization or in defiance of the company's express policies and procedures. Of course, organizations can have different levels of knowledge and complicity, and one significant benefit of sentencing guidelines is that they help federal judges distinguish between different levels of culpability among legally responsible organizations.

The second reason why organizational guidelines were an important endeavor is rooted in fact. The fact is that lawlessness and unethical behavior within corporations was a serious problem before the 1990s era of sentencing reform. In many industries—including healthcare—fraud, misrepresentation, kickbacks, conspiracies, and the presentation of false claims were not uncommon, and the federal enforcement and penalty scheme was simply insufficient to address this criminal behavior. Fines were relatively low and were not imposed consistently on all of the organizations that deserved them. Indeed, so many companies got such minor sanctions, that it often made more sense for a company just to pay the criminal penalty — as “the cost of



doing business” – than to make the investments necessary to prevent their employees from engaging in illegal behavior in the first place. In addition, there really was no incentive for companies to cooperate with government investigators who suspected criminal wrongdoing. So when government agents came around asking questions, a rational company was often much better off by just ‘circling the wagons’ and refusing to play ball. Congress made clear in the Sentencing Reform Act that there should be sentencing guidelines directed at organizations, and that a stiff fine or a term of corporate probation (or both) were important in order to address the dual difficulty of serious crimes that were being committed for the benefit of organizations, and companies that weren’t being at all helpful in dealing with it.

Okay, so we know that the Commission created the organizational guidelines to respond to these types of problems. Let’s drill down and look specifically at the historical development of the policies that underlie the organizational guidelines. The remainder of my presentation will focus on the original Commission’s process for developing the organizational guidelines, the “first principles” that the organizational guidelines are based upon (which are clearly reflected in the well-known seven elements of effective compliance and ethics programs), and the two sets of amendments that have been made to the organizational guidelines since their creation in 1991.

## II. The First Commission's Process for Developing Organizational Sentencing Policy

With respect to the process that the original Commission undertook, you can imagine that devising a set of rules for a previously unregulated activity – in this case, federal criminal sentencing – is no small task. As I mentioned, the first Commission thought it best to prioritize, and it primarily addressed itself to developing guidelines for individual defendants *first*, before it turned to the policy that would govern the sentencing of organizations. But even in the early days, the Commission understood that part of its statutory mandate was to develop guidelines for sanctioning organizations, and it did a fair amount of work to lay the foundation for its future consideration of appropriate organizational sanctions.

To begin with, within a year after the appointment of the first members of the Commission, the agency held a public hearing devoted exclusively to consideration of organizational sanctions. Witnesses included representatives from the Department of Justice and the American Bar Association, as well as corporate defense attorneys specializing in tax and antitrust offenses.

The Commission also set out to conduct extensive empirical research on the sentencing of organizations. For example, it collected detailed information regarding nearly 2,000 cases involving organizational defendants, and looked at more than 80 relevant

variables in those cases, including the types of offenses and offenders prosecuted in federal courts; the sentences imposed; and the factors that had influenced the court to reach the fine level it imposed.

The Commission also formed various advisory and working groups to assist in the development of the guidelines. There was an attorney working group that met regularly and ultimately submitted written recommendations regarding criminal penalties for organizations. There was an advisory group comprised of federal judges that reviewed and commented on draft proposals. And the overall workability of the proposed organizational guideline scheme was evaluated by a large and diverse group of federal probation officers (who are the judicial agents tasked with gathering facts and making sentencing recommendations to federal judges). And the Commission did not simply and solely rely on the recommendations of the working groups that it had formed; it also solicited views on punishing and preventing organizational offenses from various federal agencies with expertise in this area, including DOJ, Health and Human Services, the Environmental Protection Agency, and the Federal Trade Commission, just to name a few.

Now, it is important to note that, throughout the five-year data and information gathering process, the Commission also actively sought public input regarding the development of sanctions for organizations. Every report and draft proposal was published for public comment, and the Commission held public hearings not only initially but also following the publication of each of three major sets of draft guidelines. I am sure that it comes as no surprise that the business community was among the

interested members of the public who made its feelings known early on, when it urged the Commission *not* create binding rules for sanctioning organizations. Business representatives recommended that the Commission focus only on sanctions for individuals defendants and that it keep out of the highly complex legal arena that is organizational liability. As a fallback, the business community registered its strong preference that the Commission issue general, non-binding policy statements about organizational punishment, rather than guidelines that judges would be required to follow when determining the sentence for organizations convicted of federal crimes. But at the end of the day, Congress had made its intention that the Commission issue binding rules governing the sanctions to be imposed for corporate criminality very clear, and the Commission rose to the challenge in November of 1991.

Which brings me to “first principles” – that is, with all of the public input and research and information-gathering that was done, what did the Commission *learn* about how organizational offenses should be sanctioned?

### III. First Principles

A review of the guideline development history reveals several overarching themes—

The Commission learned, first of all, that it had to find a way to **reconcile society's interests in retribution** (also known as “just deserts”), on the one hand, **and the need for deterrence** (or preventing future crimes), on the other. These are two competing theories of punishment, both of which could be applicable to organizational penalties, and in early drafts of the proposed sanctions, the Commission laid out two completely different approaches based on these different philosophies. The just deserts approach emphasized an organization's culpability (or blameworthiness), which the Commission thought could be measured by factors such as whether the crime resulted from a conscious plan of top management or by the independent actions of lower echelon employees and whether the organization took steps to discipline responsible employees prior to indictment. The deterrence approach, by contrast, focused on the harmfulness of the criminal conduct and whether the organization had taken steps to detect or prevent the crime. Taken to their logical conclusions, and without reconciliation, the two theories of punishment could lead to two different results regarding the appropriate penalty for an organization that had been convicted of a federal crime.

The Commission's research also revealed that, unlike the guidelines geared toward individual defendants, the guidelines for

organizations needed to **promote the establishment of crime control mechanisms *within* the organization itself.** In other words, due to the unique nature of organizational crime (which involves a principal-agent relationship) *internal* organizational controls were going to be key! Witnesses at Commission hearings repeatedly testified about the importance of internal corporate monitoring as a means of deterring organizational crime, and the flipside was also referenced, as witnesses discussed the significance of “tone from the top” and observed that criminal misconduct often manifested itself in organizations where the upper management had created an atmosphere encouraging that type of behavior. Indeed, one important takeaway from much the Commission’s early research was that a corporation itself is in the best position to police the activities of its employees and that it can effectively deter criminal conduct by establishing an environment that demands legality rather than one in which employees are encouraged to engage in criminal behavior that benefits the organization.

Now, this realization—that the organization’s own efforts are the key to preventing corporate crime—was crucial but not inevitable. That is, despite the near consensus that an organization can effectively prevent employee misconduct (and certainly more so than external law enforcement), witnesses and commentators also agreed that a rational organization would not necessarily undertake to put prevention mechanisms into place **unless incentives to do so were somehow built into the sentencing system.** And this is where the philosophy of

punishment began to coalesce around the role that compliance programs could play in organizational sentencing.

Now, before I explain this interaction, it is important to note that the general idea of compliance programs long preceded the sentencing guidelines, but had previously been applied only in the context of companies on probation. So, for example, when an organization found itself in court facing criminal liability, courts often considered whether to place the company on probation for a period of time, and as part of the probation requirement, mandate that the organization put in place a program that could minimize the prospect of repeating the same or similar criminal behavior. It was only after the Commission began working on the organizational guidelines that the concept of compliance programs shifted from being solely a condition of probation for organizations that were already in trouble to a mechanism for all organizations to implement as a means of preventing corporate malfeasance in the first place. Compliance programs were generally viewed as a good preventative measure for smart companies, even those that had managed to avoid criminal mischief in the past, but the question remained—could a sentencing system be constructed to encourage companies to make the necessary investments in such programs?

At the Commission's second hearing on the organizational guidelines, in October of 1988, several witnesses provided an answer: Yes. Under the new guideline scheme, the sentences imposed on organizations could take into account the extent to which a corporation

through its internal governance processes had taken on the responsibility at the highest level to forestall criminal activity. In other words, **compliance programs could, and should, be a *mitigating factor* during consideration of punishment.** This view was nearly unanimous. Many commentators maintained that treating compliance as a mitigator would provide an incentive for organizations to adopt compliance programs and would encourage the creation of a value system within a corporation that says it is more important to stop criminal activity than it is to maximize profits. Others suggested that the guidelines provide for *substantial* mitigation – perhaps even total amelioration of any fine – for an organization that maintained effective policies and practices reasonably designed to prevent crime (assuming, of course, the illegal conduct was unknown, and reasonably unknowable, by high-level management). The commissioners’ comments and follow up questions indicated considerable interest in this idea, so it is not at all surprising that the final guideline was constructed to permit a significant reduction in the applicable fine amount for organizations that had put in place effective programs to prevent and detect violations of the law.

Going back to “first principles”—in the end, and speaking generally now, the early Commission learned that it needed to develop a guideline scheme for sanctioning organizations that accomplished more than one goal: to punish organizational defendants more severely and uniformly but also to encourage business practices that prevented and deterred corporate criminal activity. The final product was a guideline system that simultaneously serves as both a front-end and a back-end



mechanism for dealing with criminal behavior. On the front-end, the guidelines encourage companies to police themselves; that is, to establish their own internal systems for preventing and detecting criminal or unethical activity within the organization. On the back-end, the guidelines provide for serious financial penalties if an organization is convicted of criminal conduct, but they also provide *mitigating* credits—leniency, if you will—for convicted organizations that have in place the kinds of front-end systems that the guidelines encourage. Commentators often characterize rules that involve such a combination of penalties and incentives as a “carrot-and-stick” approach, and when I was thinking about this while preparing a speech I gave earlier this year, it occurred to me that this way of handling misconduct is really not unlike the manner in which authorities approach human behavior in *other* aspects of life.

Let me give you an example . . . Like many of you, I am a parent. And when my children were young, I really wanted to be the best parent I could be. So I read all of the books, and I took all of the parenting courses, and I learned *a lot*. One thing I learned is that “to discipline” actually means “to teach,” and that, at least in the view of some parenting experts, parents should strive to establish rules that incentivize children to make good choices *themselves* rather than rely on structures designed solely to penalize children harshly after they have misbehaved. Okay, sure, you can teach a child a lesson by abruptly sending him to his room with no dinner, but some say that *real* learning only happens when the expectations are clear, and the logical

consequences of misbehavior are spelled out in advance so as to encourage the child to take it upon himself to alter his conduct where appropriate. A quote by German physicist and author Johann Wolfgang von Goethe puts it this way: “Correction does much, but *encouragement* does more.”

That same principle is applied in the organizational guidelines in order to promote *corporate* “discipline.” The sentencing guidelines were designed to make clear that corporations face severe financial penalties for the criminal wrongdoing of their employees. But organizations don’t have to be mere passive recipients of the severe financial penalties that the guidelines prescribe. Rather, under the guideline scheme, smart companies can act affirmatively to mitigate potential punishment by taking concrete steps to prevent, detect, and remedy illegal and unethical conduct—which, by the way, also amply demonstrates the company’s own antipathy toward lawbreaking. The fines that are calculated under the guidelines can be *substantial* when imposed on convicted companies in heavily-regulated industries such as healthcare, so the early Commission understood that the ability to mitigate the potential punishment would give many organizations all the incentive they need to invest in systems that promote legal and ethical behavior on the part of their employees.

Okay, so we have touched upon the early Commission’s reasons for structuring the Chapter 8 organizational sentencing guideline system as it did—to encourage organizations to invest in self-policing by

implementing compliance programs. But no discussion of the historical development of the guidelines would be complete without examining the principles that gave rise to the well-known seven elements of an effective compliance and ethics program. Put another way, we now know why the Commission thought it important to encourage effective compliance programs and also how it went about doing so (by giving mitigating credit to organizations that had such programs). But what about the specifications for such programs? How did the early Commission address the question of what criteria organizations had to meet in order to get that mitigating credit?

#### IV. Effective Compliance and Ethics Programs

The historical record reveals that once the Commission recognized the potential of compliance programs as a component of the organizational sentencing structure, the agency began to consider information about what such programs should contain. At the 1988 hearing, one witness offered a framework for analyzing the key objectives and elements of an effective compliance program, which to his mind included regular and timely reporting about the operation of the program from the operating line through senior management and on to the board of directors; prompt identification and resolution of issues; establishment of preventive programs and procedures; and identification of developing issues or trends. In subsequent public forums, other witnesses, too, touched upon various elements that they thought should be included in a successful compliance program, such as an audit function, an ombudsman or other system to protect employees who report corporation wrongdoing, and support of upper management and managers to monitor and execute the program.

Significantly, though, the Commission's own initial drafts of the organizational guidelines refrained from spelling out the specific types of compliance policies or procedures that would qualify for the proposed fine reduction. The Commission's hesitancy to dictate the specific terms that compliance programs must meet in order to be deemed effective was clear, and this reluctance made sense, given that the organizational guidelines were intended to apply to a variety of organizations—

organizations that would need flexibility to tailor their compliance programs to fit the industry and the size of the institution. As time passed and drafts were subjected to further scrutiny, the Commission yielded a bit, adding language that defined a compliance program as “a program that has been reasonably designed, implemented, and enforced so that it will generally be effective in preventing and detecting criminal conduct,” and also stating that “[t]he hallmark of [such a program] is that the organization exercised, prior to the offense, and continues to exercise due diligence in seeking to prevent and detect criminal conduct by its agents.” What the Commission developed at the end of the day, however, was less a recipe for an effective compliance program and more of a roadmap containing seven “effective program” signposts. As you well know, these benchmarks are that, at a minimum, an organization must:

- (1) Establish standards and procedures to achieve and maintain compliance with the law;
- (2) Ensure high-level responsibility for implementing the compliance program;
- (3) Avoid delegating responsibility to known problem persons;
- (4) Communicate and train all employees and agents effectively;
- (5) Periodically audit the program and continually monitor employee activities, including establishing an internal reporting system, such as a hotline;
- (6) Discipline violators appropriately; and

- (7) Respond promptly when criminal or unethical conduct is discovered, including remedying any harm and revising the compliance program to make it more effective in the future.

In the Commission's view, each of these elements speaks directly to an organization's *culpability* in the sense that they permit an evaluation of, first, what did the organization do to prevent criminal conduct by its employees?; second, what role did high-ranking personnel within the organization play with respect to involvement in, or tolerance of, the offense?; and, third, what did the organization do after the fact to report and remedy the offense? The elements also define a model of good corporate citizenship in the larger scheme of things, because when an organization takes preventive and remedial steps such as these, it is much more likely to be able to ferret out misconduct *itself* – before the authorities come knocking – so that the behavior can be dealt with internally without outside intervention. And *this*, we know now, is the essence of deterrence and the true triumph of the federal sentencing guidelines for organizations.

To extend my parenting analogy a bit, as a young mom, I remember being told that encouraging self-policing as an aspect of discipline was difficult to accomplish but well worth the effort. I was advised to be firm and to establish rules that included clear consequences, but to also give my children the ability to have input and the freedom to disagree and to make mistakes. Doing so, I was told, would ultimately benefit us *all* because it would hasten the tricky transition from my always having to serve as an *external* source of

control over my children's behavior, to my children *themselves* becoming *internally* motivated to act appropriately.

Looking back over these past twenty years, it is clear that the tricky transition from a world in which corporate criminality was mainly the concern of government authorities to a world in which companies *themselves* engage in internal, self-initiated campaigns to root out unlawful and unethical behavior is well underway. Today, in accordance with the federal sentencing guidelines, companies routinely set high ethical standards, review their own practices and cultures, and make the investments that are necessary to promote the lawful behavior of their employees. They cooperate with government authorities when they are required to do so, and—perhaps most important to *you*—they hire compliance professionals such as yourselves, who take seriously the important work of assessing risk, training employees, conducting audits, and avoiding problems. In other words, the guidelines have ushered in an unprecedented era of compliance and ethics in the healthcare industry and elsewhere, and they are universally viewed as a model that companies use to develop effective systems of internal control that ultimately reduce crime.

And *that's* the *real* payoff: we *all* benefit, because when a company assumes responsibility for monitoring and addressing the behavior of its employees, the federal government doesn't need to do so. Corporate crime is reduced *and* scarce societal resources are saved.

## V. The Org Guideline Amendments

In the time I have left, I wanted to highlight a few interesting postscripts that one should be aware of in the history of the development of the organizational sentencing guidelines. As I mentioned, the Chapter Eight organizational sentencing guidelines were originally enacted in 1991, complete with mitigating credit for compliance programs and a general discussion of the minimal elements of an effective compliance program embedded in the application notes. Ten years later, the Commission became aware of the broad impact that the organizational guidelines have had on influencing corporate culture quite apart from criminal sentencing, and it formed an ad hoc advisory group to review the organizational guidelines with a particular emphasis on the inclusion of ethics, as well as compliance with the law.

In April of 2004, following both a comprehensive report from the advisory group and a directive from Congress to study the operation of the organizational sentencing guidelines as part of the Sarbanes-Oxley Act of 2002, the Commission voted to revise Chapter Eight in a number of important respects. First, the Commission moved the criteria for an effective compliance program out of the endnotes and into a separate guideline—the current section 8B2.1—“[i]n order to emphasize the importance of compliance and ethics programs and to provide more prominent guidance on the requirements for an effective program.” As part of this restructuring, the Commission also crafted a new Chapter



Eight introduction that featured the importance of ethical behavior in addition to exercising due diligence to prevent and detect criminal conduct, and maintained that an organization must also “otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

The 2004 amendment contained other notable changes, including clarification of many of the effective compliance program elements; the imposition of significantly greater compliance responsibilities on the organization’s governing authority and executive leadership; and the inclusion of a requirement that the organization “periodically assess the risk of the occurrence of criminal conduct” and target their compliance resources on “those potential criminal activities that pose the greatest threat in light of the risks identified.”

Other than this 2004 refocus and restructuring, the Commission revisited the organizational guidelines and compliance program standards only one additional time in the history of Chapter Eight – two years ago, in 2010. That year, the Commission responded to public comment and Commission data, and the resulting amendment was relatively narrow in scope. In a nutshell, the 2010 amendment had three parts.

First, the Commission homed in on the seventh minimal requirement for an effective compliance program – that the organization respond appropriately to criminal conduct once it has occurred. Members of the public sought clarification regarding what steps the seventh element required, and the Commission added a new application

note to clarify that the organization need only take “reasonable steps,” as warranted under the circumstances, to remedy the harm and prevent such conduct in the future, and that such steps could include providing restitution to identifiable victims, cooperating with authorities, and engaging outside professional advisors to ensure assessment and implementation of any modifications.

The second aspect of the 2010 Amendment was the Commission’s decision to reconsider the automatic preclusion for compliance program credit in §8C2.5(f) when high-level personnel are involved in the criminal conduct. Commission data demonstrated that, at that point in the history of the organizational guidelines, only a handful of organizations had actually received the culpability score reduction for having an effective compliance and ethics program, and it appeared that this low rate was primarily because most organizations facing sanctions were small companies in which high-level personnel had been involved with the criminal offense (that circumstance alone triggered a bar to receiving compliance credit under the original guidelines). Because the Commission was concerned that the general prohibition against receiving credit if high-level personnel were involved was sweeping to broadly to prevent companies with otherwise effective programs from getting the mitigating credit, it created a limited exception that permitted organizations to receive compliance credit despite the involvement of high-level personnel in the offense under certain circumstances.

Third, and finally, the amendment also sought to augment and simplify the recommended conditions of probation for organizations. Moving away from a previous construct that made probation available only to enforce a monetary penalty, the Commission amended the guideline so that all conditional probation terms are available for the court's consideration in determining an appropriate sentence.

Notably—and here's the takeaway on the Amendments—the Commission was keenly aware that “even modest changes to the Guidelines can have a huge impact on the compliance and ethics activities [of] virtually every organization”; therefore, with respect to the 2010 Amendments, the Commission actively solicited input from groups known to have an interest in Chapter Eight—including government agencies, ethics and compliance industry professionals, and non-profit research organization. And as a direct result of the Commission's effort to reach out and seek feedback from interested stakeholders before it made any guideline changes, the proposed changes to Chapter Eight received more public comment than any other proposed amendment in 2010!

And I hope that you're starting to notice a pattern . . .

## VI. Conclusion

That is, the story that I have been relating to you regarding the development of the organizational guidelines over the past twenty years has been as much about the Commission's interest in, and responsiveness to, public comment as anything else! The Commission is acutely aware that Congress, government agencies, industry professionals and all sorts of people engaged in collective activity rely on the federal sentencing guidelines for organizations and the principles that they embody, and the agency takes public comment about the work that it does and the operation of the guidelines extremely seriously. The Commission's statutory mandate is not only to *create* a guideline system but to *maintain* one—and we can only do that by getting feedback from people in field. People who are charged with the responsibility of evaluating risk and developing actual effective compliance programs—people like *you*!

Going forward, I hope that we will hear from you. Armed with this new sense of the history of the sentencing guidelines and the role that they have played in the development of compliance and ethics generally, I hope that you will engage in the process of providing the Commission with feedback about your experiences with the guidelines. Please know that the Commission does listen to your comments, and we welcome them. Please look out for future guideline amendments in this area, and, regardless, please let us know how it's going. In the meantime, I wish you all the best in your work! *Thank you.*

National Sentencing Policy Institute  
Memphis, Tennessee—October 2, 2012

*USSC Plenary Panel: Mandatory Minimum Report*

Thank you and good morning. I am going to talk *briefly* about the report that the Commission issued in October of 2011 regarding “Mandatory Minimum Penalties in the Federal Criminal Justice System.” The report was prepared in response to a specific congressional directive, and the Commission spent several years studying mandatory minimum penalties and seeking the views of various stakeholders. In addition to reviewing the data, legislation, and literature, the Commission held a hearing specifically devoted to mandatory minimums; consulted with advisory groups and representatives from government, academia, and the scientific community; and conducted detailed interviews with prosecutors and defense attorneys in 13 districts throughout the country.

For the purpose of this overview, I wanted to report on

- the general content of the mandatory minimum report
- three important data points regarding mandatory minimums, and
- the overall Commission’s observations and recommendations.

**I. Content of the Report**

With respect to content, the report provides a comprehensive overview of mandatory minimum penalties in the federal system. The final printed report and its appendices are several hundred pages long, but it does have an executive summary that distills the primary takeaways. The body of the report begins with a chapter that summarizes the history of mandatory minimums, and it is interesting to note, as the report recognizes, that these types of penalties have been around

since the beginning of our Republic (many of the early man mins were in the form of mandatory death sentences), and at various points in time, Congress has earnestly enacted, and also repealed, federal statutes that contain mandatory minimum penalties.

Building on the history, the report contains chapters that seek to provide an overview of the interaction between mandatory minimum penalties and the sentencing guidelines, and that also describe more recent systemic changes related to such matters as the scope and magnitude of the federal criminal justice system, the size and composition of the federal prison population, and the number and severity of the prescribed mandatory minimum penalties for federal crimes. Of course, in light of the dramatic shifts that have occurred regarding federal sentencing, it is not surprising that differing policy views about the propriety of mandatory minimums exist, and the report also lays out the primary arguments—those in favor of, as well as those against—criminal statutes that establish mandatory minimum penalties.

The bulk of the report, though, is devoted to an analysis of data. The report looks first at the information that the Commission gleaned from an evaluation of sentencing practices in 13 selected districts. Then, the report provides statistics related to the operation of mandatory minimum penalties both in the federal criminal justice system overall and specifically in regard to each of the four major offense types in which mandatory minimums play a significant role: drug offenses, firearms offenses, child pornography offenses, aggravated identity theft.

This brings me to the second area that I wanted to discuss – the data . . .

## II. Data re Mandatory Minimums

Commissioner Carr's clicker presentation has already provided you with some of the most significant data points (he has managed to steal my thunder!), but here are three big picture statistical takeaways from the report:

1. First, only about one-quarter of all federal criminal defendants are convicted of an offense that carries a mandatory minimum penalty.

- The Commission examined **72,239 offenders** sentenced in federal court in Fiscal Year 2010,<sup>1</sup> and found that **19,896 offenders (27.2%)** were convicted of an offense carrying a mandatory minimum.

So, the Commission asked, who are these offenders?

- The vast majority of the offenders who were faced with mandatory minimums **committed drug offenses**.
  - 77.4% of the 19,896 offenders convicted of a statute carrying a mandatory minimum were convicted for drug trafficking offenses (other mandatory minimum offenses include firearms, child pornography, and aggravated identity theft).
- These offenders were overwhelmingly male (90%) and U.S. Citizens (73.6%).
- In addition, Hispanics comprise the largest portion of the group of offenders convicted of an offense carrying a man min (38%), while 31.5% were Black, 27.4% were White, and 2.7% were Other Race.
- Finally, 27% of the offenders facing man min penalties came from seven districts: the Southern and Western Districts of Texas, the Southern and Middle Districts of Florida, the S.D. California, the D. Arizona, and the D. South Carolina.

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<sup>1</sup> We had received data on 83,946 offenders in FY 2010, but 11,068 were excluded for missing data for purposes this study.

2. Second big takeaway: nearly half of those offenders who were convicted of an offense carrying a mandatory minimum penalty were **relieved** of the mandatory minimum because they either provided substantial assistance to the government or qualified for the safety valve, or both.
- Of the 19,000-plus offenders facing a man min, **46.7%** received relief from the mandatory penalty
  - In terms of demographics, Other Race offenders received relief the most often (in 58.9% of their cases), while Black offenders received relief the least often (in 34.9% of their cases).<sup>2</sup>
  - When we look just at the safety valve mechanism, we see that Hispanic offenders qualify for the safety valve at the highest rate, while Black offenders qualify at the lowest rate (this is likely due to either criminal history or the involvement of a dangerous weapon in connection with the offense)<sup>3</sup>
  - We also see that drug offenders are much more likely to receive relief from a mandatory minimum than other types of offenders facing mandatory minimum penalties (which makes sense because the safety valve is only available for drug offenses).
3. Third, as a result of the mechanisms for relief from mandatory minimums, at the end of the day, only 14.5 % of all federal offenders are ultimately subject to a mandatory minimum penalty.
- Not surprisingly, male offenders remained subject to the mandatory minimum penalty at sentencing more often than female offenders (males remained subject to the man min in 55.3% of their cases, compared to 34.5% of the cases involving female offenders).

<sup>2</sup> Hispanic rate: 55.7% of their cases; White rate: 46.5% of their cases.

<sup>3</sup> Hispanics qualify for safety valve in 42.8% of their cases  
 Other Races: 36.6% qualify for safety valve  
 White: 26.7% qualify for safety valve  
 Blacks: 11.1% qualify for safety valve



- And Black offenders (who as you will recall have the lowest overall rate of relief) remained subject to a mandatory minimum penalty at the highest rate of any racial group; that is, in 65.1 percent of their cases, followed by White (53.5%), Hispanic (44.3%), and Other Race (41.1%).

4. Three other noteworthy data points that I wanted to mention:

- The data demonstrates that receiving relief from a mandatory minimum sentence made a significant difference in the sentence ultimately imposed:
  - Offenders who were convicted of an offense carrying a mandatory minimum penalty and remained subject to that penalty received an average sentence of 139 months, compared to 63 months for those offenders who receive relief from a mandatory penalty.
- The data also shows that, overall, offenders who were facing a mandatory minimum penalty pled guilty at a slightly lower rate than offenders who were not charged with an offense carrying a mandatory minimum (94.1% versus 97.5%)
- Nearly 40% of the current federal prison population is comprised of offenders who remained subject to a mandatory minimum penalty and are serving mandatory minimum sentences (39.4% of the 191,757 offenders in BOP custody)

### III. Conclusion and Recommendations

So, what did the Commission make of all of this information about the history and operation of mandatory minimums? Well, ultimately, there was a spectrum of views among the Commissioners about mandatory minimum penalties. But the Commissioners were able to agree that “a strong and effective sentencing guidelines system best serves the purposes of the Sentencing Reform Act.” If Congress does continue to enact mandatory minimum penalties, however, the Commissioners also agreed that such penalties (1) should not be excessively

severe, (2) should be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) should be applied consistently.

The Commission also suggested certain more specific reforms to improve the current system of mandatory minimums, including that:

- Congress should consider **expanding the offenses eligible for the safety valve** and should consider marginally expanding the safety valve to include certain non-violent offenders who receive 2 or perhaps 3 criminal history points.
- Congress should **request prison impact analyses** from the Commission as early as possible in its legislative process whenever it considers enacting or amending mandatory minimum penalties.
  - The Commission believes that early analyses of prison impact may assist Congress in focusing increasingly strained federal prison resources on offenders who commit the most serious offenses.
- Congress should **reassess both the severity and scope of the recidivist provisions** at 21 U.S.C. 841 and 960 (§ 851 is the mechanism).
  - Sentencing data and interviews with prosecutors and defense attorneys indicate that mandatory minimum penalties that are considered excessively severe tend to be applied inconsistently.
- Congress should consider **amending 18 U.S.C. § 924(c)** (Possessing firearm in connection with drug trafficking or crime of violence) so the enhanced mandatory penalties for second or subsequent offenses apply only to prior convictions and should consider amending those penalties to lesser terms.
- Congress should **eliminate the “stacking” requirement** and give discretion whether to impose sentences for multiple violations of 924(c) concurrently with each other.

- Congress should consider **more finely tailoring the definitions of the predicate offenses that trigger the ACCA** (Armed Career Criminal Act) mandatory minimum (15 year minimum)
- Certain non-contact sex offenses may be excessively severe and might be applied inconsistently.

As you have heard from Judge Saris in regard to the Commission's upcoming priorities, the Commission intends to work with Congress in its consideration of these suggested reforms and its evaluation of mandatory minimum penalties overall.

THANK YOU.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Jackson, Ketanji B.	<b>2. Court or Organization</b> U.S. District Court for the District of Columbia	<b>3. Date of Report</b> 1/3/2013
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> U.S. District Judge	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 1/3/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 1/1/2012 to 12/30/2012
<b>7. Chambers or Office Address</b> One Columbus Circle, N.E. Washington, DC 20002		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Jackson, Ketanji B.	1/3/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	The George Washington University Law School - Teaching	\$3,000.00
2. 2011	The George Washington University Law School - Teaching	\$3,000.00
3.		
4.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2012	Medstar- Salary
2.	
3.	
4.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	1/3/2013

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
Jackson, Ketanji B.	1/3/2013

**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. IRA #1					Exempt				
2. -PRIMECAP Odyssey Growth	A	Int./Div.	J	T					
3. - Schwab Inst Large Cap Val Trust Fd Cls R	A	Int./Div.	J	T					
4. -Schwab S&P 500	A	Int./Div.	J	T					
5. -Janus Triton I	A	Int./Div.	J	T					
6. -Munder Veracity Small Cap Value Y	A	Int./Div.	J	T					
7. -Schwab Small Cap Index	A	Int./Div.	J	T					
8. -Vanguard Mid Cap Index Ins	A	Int./Div.	J	T					
9. -American Funds New Perspective R5	A	Int./Div.							
10. -Artisan International Small Cap Inv	A	Int./Div.	J	T					
11. - Dodge & Cox International Stock	A	Int./Div.	J	T					
12. -Vanguard Total Intl Stock Index I (X)	A	Int./Div.	J	T					
13. -Schwab Instl CorePlus Fixed Inc III	A	Int./Div.	K	T					
14. TIAA CREF Money Market Fund	A	Int./Div.	J	T					
15. Black Rock Money Market Class A	A	Int./Div.	J	T					
16. Black Rock Large Cap Core- Class A	A	Int./Div.	J	T					
17. Northeast Investors Growth Fund	A	Int./Div.	J	T					

1. Income Gain Codes (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 7

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Jackson, Ketanji B.	1/3/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Fidelity Freedom K2035 Fund	A	Int./Div.	M	T					
19. PNC Checking accounts	A	Int./Div.	J	T					
20. Wells Fargo Checking Account	A	Int./Div.	L	T					
21.									

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	



**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Jackson, Ketanji B.	1/3/2013

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**

Page 7 of 7

Name of Person Reporting	Date of Report
Jackson, Ketanji B.	1/3/2013

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* **Ketanji B. Jackson**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		82	154	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		184	996	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence	1	130	207
Real estate owned – personal residence	1	395	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		32	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		198	516				
				Total liabilities	1	130	207
				Net Worth		762	459
Total Assets	1	892	666	Total liabilities and net worth	1	892	666
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
Artisan International Small Cap Fund	\$ 1,766
BlackRock Large Cap Core Fund	1,392
BlackRock Money Market Portfolio	1,298
Dodge & Cox International Stock Fund	4,561
Fidelity Freedom K-2035 Fund	117,241
Janus Triton Fund	2,798
Northeast Investors Growth Fund	1,843
Munder Veracity Small-Cap Value Fund	1,713
PRIMECAP Odyssey Growth Fund	5,285
Schwab Core Plus Fixed Income Trust Fund	17,686
Schwab Large Cap Value Trust Fund	5,407
Schwab S&P 500 Index Fund	11,168
Schwab Small Cap Index Fund	1,730
TIAA CREF Money Market Fund	4,694
Vanguard Mid-Cap Index Fund	2,249
Vanguard Total Intl Stock Index I	4,165
Total Listed Securities	<u>\$184,996</u>

Senator WHITEHOUSE. Thank you, Commissioner Jackson.

Our final nominee, Judge Beverly O'Connell, welcome. Please proceed with whatever statement or acknowledgments you would care to make.

**STATEMENT OF BEVERLY REED O'CONNELL, NOMINEE TO BE  
DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALI-  
FORNIA**

Judge O'CONNELL. Thank you, Mr. Chairman.

First, I, too, would like to thank the President for nominating me for this honor; Senator Boxer for her kind words; Senator Feinstein for her support of my application; to you, Chairman Whitehouse, Ranking Member Grassley, for scheduling this hearing. And I would like to introduce to you some of the family that I have with me today.

We are a family of public servants, and I would like to introduce my husband, who is a deputy district attorney in Los Angeles; my sister, Linda Reid, formerly of the Central Intelligence Agency; her wife, Sherry Burns, retired from the Central Intelligence Agency; our niece, Kaelin, the only one who is in the private sector in our family; her friend, Whitney Welsh, who has become an adopted member of our family; and Presiding Justice Tricia Bigelow from Division 8, Second District Court of Appeal in Los Angeles.

I would be remiss without thanking my court staff: my court reporter, Mary Lou Murphy; and my courtroom deputy clerk, Martha Cabrera, whose professionalism and commitment to justice makes my courtroom a place where everybody has a fair chance to be heard.

I would also like to recognize all my friends and family in California who could not be here, but are probably going to watch a delayed recording since it is very early on the west coast.

Thank you.

[The biographical information of Judge O'Connell follows:]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).  
  
Beverly Reid O'Connell  
Beverly Ann Reid
2. **Position**: State the position for which you have been nominated.  
  
United States District Judge for the Central District of California
3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
Los Angeles Superior Court  
San Fernando Courthouse  
900 Third Street  
San Fernando, California 91340  
  
Residence: Pasadena, California
4. **Birthplace**: State year and place of birth.  
  
1965; Ventura, California
5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1987 – 1990, Pepperdine University School of Law; J.D. (*magna cum laude*), 1990  
  
1983 – 1986, University of California, Los Angeles; B.A., 1986
6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present  
 State of California, Superior Court for the County of Los Angeles  
 900 Third Street  
 San Fernando, California 91340  
 Assistant Supervising Judge, North Valley District (2011 – present)  
 Judge of the Superior Court (2005 – present)

1999 – present  
 Loyola Law School  
 919 South Albany Street  
 Los Angeles, California 90015  
 Adjunct Professor of Law

1998 – present  
 Pepperdine University School of Law  
 24255 Pacific Coast Highway  
 Malibu, California 90263  
 Adjunct Professor of Law

1995 – 2005  
 United States Attorney's Office for the Central District of California  
 312 North Spring Street  
 Los Angeles, California 90012  
 Senior Litigation Counsel, Organized Crime Strike Force (2003 – 2005)  
 Deputy Chief, General Crimes Section (1999 – 2003)  
 Assistant United States Attorney, Major Narcotics Section (1996 – 1999)  
 Assistant United States Attorney, General Crimes Section (1995 – 1996)

1990 – 1995  
 Morrison & Foerster  
 555 West Fifth Street, Suite 3500  
 Los Angeles, California 90017  
 Associate

Summer 1989  
 Morrison & Foerster  
 555 West Fifth Street, Suite 3500  
 Los Angeles, California 90017  
 Summer Associate

Summer 1989  
 Howarth & Smith  
 523 West Sixth Street, Suite 728  
 Los Angeles, California 90014  
 Summer Associate

1986 – 1987, Summer 1988  
 Law Offices of Mace Stephen Simon  
 118 South Beverly Drive  
 Beverly Hills, California 90212  
 Legal Assistant (1986 – 1987)  
 Summer Associate (Summer 1988)

Other Affiliations (uncompensated):

1998 – present  
 Women Lawyers Association of Los Angeles  
 634 South Spring Street, Suite 617  
 Los Angeles, California 90014  
 Board of Governors (1998 – present)  
 First Vice-President (2005)  
 Second Vice-President (2004)  
 Secretary/Treasurer (2003)

2006 – 2008  
 Pasadena First United Methodist Church  
 500 East Colorado Boulevard  
 Pasadena, California 91101  
 Board of Trustees

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional:

The Los Angeles Superior Court received the County Image Enhancement Award from the Los Angeles County Supervisors for the Power Lunch program, 2011

Sigma Kappa Sorority, Colby Award for Law and Justice, 2008

Pepperdine School of Law David McKibbin Excellence in Teaching Award, 2005

Anaheim Police Department Award for Diligent Efforts in the Prosecution of Violent Crimes and Major Narcotics, 1999



Drug Enforcement Administration (DEA) Administrator's Award for Exceptional Service Rendered to the Federal Government, 1999

DEA Certificate of Appreciation for Outstanding Contributions in the field of Drug Law Enforcement, 1998

Los Angeles District Attorney's Office Commendation for Outstanding Community Efforts for Project L.E.A.D., 1998

DEA Certificate of Appreciation for Outstanding Contributions in the field of Drug Law Enforcement, 1998

United States Department of Justice, Special Achievement Award for Meritorious Acts and Service Performed on Behalf of the Department of Justice, 1998

DEA Award in Recognition for Outstanding Contributions in Operation Rio Blanco, 1998

United States Department of Justice, Special Achievement Award for Sustained Superior Performance, 1998

Employee Volunteer Service Award, 1997

United States Department of Justice, Special Achievement Award for Sustained Superior Performance, 1996

Federal Bureau of Investigation Commendation for Professional Efforts in *People v. O.J. Simpson*, 1995

United States Attorney's Office Commendation for Outstanding Efforts in *People v. O.J. Simpson*, 1995

Academic:

Finalist, Pepperdine University School of Law Commencement Speaker Competition, 1990

Managing Editor, Pepperdine Law Review, 1990

Recipient, Full Tuition Dean's Merit Scholarship, 1987 – 1990

Recipient, Odell McConnell Scholarship, 1990

American Jurisprudence Award, Torts II, 1988

American Jurisprudence Award, Constitutional Law: Federal/State Powers, 1989

American Jurisprudence Award, Trial Practice, 1990

American Jurisprudence Award, Commercial Space Law, 1990

American Jurisprudence Award, Law Review, 1990

Dean's Honor List (six semesters), 1987 – 1990

Finalist, UCLA Commencement Speaker Competition, 1986

UCLA Chancellor's Scholar, 1983

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1990 – 1995)

Los Angeles County Bar Association (1990 – 2005)

San Fernando Valley Bar Association Bench Bar Committee (2011 – present)

Women Lawyers Association of Los Angeles (1990 – present)

Board of Governors (1998 – present)

Judicial/State Court Liaison (2005 – present)

First Vice-President (2005)

Second Vice-President (2004)

Secretary/Treasurer (2003)

Life Member, WLALA (2000)

Co-chair, Criminal Justice Section (2000 – 2002)

Co-chair, Appointive Office Committee (1998 – 2000)

Committee member, Oral History Project (1998 – 2000)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1990

There has been no lapse in membership from the date I was admitted to the date I was appointed as a judge of the Superior Court of Los Angeles County. Under the Constitution of the State of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1995  
 United States District Court for the Southern District of California, 1991  
 United States District Court for the Northern District of California, 1991  
 United States District Court for the Central District of California, 1990  
 All state courts in the State of California, 1990

There has been no lapse in membership from the date I was admitted to the date I was appointed as a judge of the Superior Court of Los Angeles County. Under the Constitution of the State of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

**11. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Administrative Office of the Courts, Education Division/Center for Judicial Education and Research  
 Governing Committee (2011 – present)  
 Governing Committee Liaison to the Criminal Law Advisory Committee (2011 – present)  
 Governing Committee Liaison to the Criminal Law Curriculum Committee (2011 – present)  
 City Club on Bunker Hill (2004 – 2010)  
 Pasadena First United Methodist Church  
 Board of Trustees (2006 – 2008)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With Mary Thornton House, *A Trial Court Judge's Perspective on Electronic Evidence Decision-Making*, in *OVERLY ON ELECTRONIC EVIDENCE IN CALIFORNIA* (West, 2011-2012). I co-authored this chapter in 2009, and it has been re-published annually without change. Copy supplied.

*A Tutorial on Speedy Trials and Preliminary Hearings*, *LOS ANGELES DAILY JOURNAL*, Apr. 18, 2011. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

July 21, 2012: I submitted a comment to the Judicial Council urging it to implement the findings of the Strategic Evaluation Committee's Report on the Administrative Office of the Courts. E-mail supplied. The report is available at [http://www.courts.ca.gov/documents/SEC\\_Final\\_Report\\_May\\_2012\\_withcoverletter.pdf](http://www.courts.ca.gov/documents/SEC_Final_Report_May_2012_withcoverletter.pdf).

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list represents my best efforts, through searches of my own records and publically available databases, to identify speeches that I have delivered and panel discussions in which I participated. I have frequently participated in "brown bag" lunches or "question and answer" panels in an effort to mentor college students, law students and young lawyers. I have also spoken at local high school, college and law school career days on a handful of occasions. In addition, I have taught numerous classes for the Administrative Office of the Courts, Center for Judicial Education and Research and the Los Angeles Superior Court, Judicial Education Section. I have listed all of the specific events that I was able to track down, but it is likely that I have given other remarks that I am unable to recall or identify.

October 22-23, 2012: I taught a class on California's Basic Felony Sentencing with Justice Tricia Bigelow in Sacramento, California. I spoke about calculating felony sentences under California's Determinate Sentencing Law, including custodial credits. PowerPoint supplied.

October 13, 2012: I taught a class for the California Judges Association in Monterey, California with Justice Mark Simons in Monterey, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

September 13, 2012: I administered the oath of office to the new officers and board members of the Women Lawyers Association of Los Angeles ("WLALA") in Los Angeles, California. I spoke about the incoming WLALA President. Remarks supplied.

August 6, 2012: I taught Documentary and Electronic Evidence with Judge Mary Thornton House at the B.E. Witkin Judicial College, in San Jose, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

July 30, 2012: I taught Making An Effective Record with Justice Richard D. Frybel at the B.E. Witkin Judicial College, in San Jose, California. I spoke about ways a trial judge can articulate matters on the record to ensure a better record. We used the PowerPoint presentation supplied for the August 11, 2011 event.

July 12, 2012: I taught a class on trial management with Judge Samantha Jessner in Los Angeles, California. I spoke about the various issues confronting a judge who tries jury trials. PowerPoint supplied.

June 30, 2012: I spoke to the Vietnamese American Bar Association on behalf of Ninth Circuit Judge Jacqueline Nguyen, in Newport Beach, California. I spoke

about my experiences in the United States Attorney's Office with Judge Nguyen. Remarks supplied.

April 24, 2012: I taught a class, Advanced Course on Social Networks, for the Los Angeles Superior Court Judicial Education Seminars with James Aquilina, in Los Angeles, California. PowerPoint supplied.

February 23, 2012: I held a Power Lunch with high school students to talk to them about the legal system at the Los Angeles Superior Court, in San Fernando, California. I created a PowerPoint game, Legal Jeopardy, to help educate the students about the legal system. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. PowerPoint, discussion topics, and agenda supplied.

January 2012: I taught a class, Jury Trial Management, with Judge Carrie McIntyre Panetta, for the Administrative Office of the Courts' Criminal Law Orientation, in San Francisco, California. I spoke about the things a trial judge needs to balance to efficiently preside over jury trials. PowerPoint supplied.

January 2012: I taught a class, Domestic Violence Cases, with Judge Phil Pennypacker for the Administrative Office of the Courts, in San Francisco, California. I spoke about evidentiary issues associated with trying domestic violence cases. PowerPoint supplied.

January 18, 2012: I taught a class, The Wizards of WebEx, with Judge Michelle Flurer and Frederick Klunder, for the Los Angeles Superior Court Judicial Education Seminars, in San Fernando, California. I spoke about the features of presenting a webinar. PowerPoint and other materials supplied.

January 12, 2012: I attended a Pepperdine School of Law Judicial Alumni event in Santa Monica, California. I spoke about the importance of Pepperdine in training me to be a judge. I have no notes, transcript, or recording. The address of the Pepperdine School of Law Alumni Affairs Office is 24255 Pacific Coast Highway, Malibu, California 90263.

December 9, 2011: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. Remarks supplied.

November 14, 2011: I taught a class, Advanced Felony Sentencing, with Judge Richard Couzens, retired, for California's Administrative Office of the Courts, in San Francisco, California. I spoke about the intricacies of the California felony sentencing scheme. I used the PowerPoint presentation supplied for the March 2011 event.

August 12, 2011: I taught Documentary and Electronic Evidence with Judge Mary Thornton House, at the B.E. Witkin Judicial College, in San Jose, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

August 11, 2011: I taught Making An Effective Record with Justice Richard D. Fybel, at the B.E. Witkin Judicial College, in San Jose, California. I spoke about ways a trial judge can articulate matters on the record to ensure a better record. PowerPoint supplied.

July 19, 2011: I taught a class, Contempt, for the Los Angeles Superior Court Judicial Education Seminars, with Judge Judith Meyer, in Los Angeles, California. I spoke about the different types of contempt and the elements for each type of contempt. PowerPoint and other materials supplied.

June 2011: I taught a class, Evidentiary Issues Involving Social Media for Trial Court Judges, for the Administrative Office of the Courts, in Los Angeles, California. I spoke about the evidentiary foundations for the introduction of social media evidence. PowerPoint supplied.

May 2011: I taught a class, Facebook, Twitter and the Worldwide Web: Evidentiary Issues in the 21st Century, for the Administrative Office of the Courts, in San Francisco, California. I spoke about the evidentiary foundations for the introduction of social media evidence. PowerPoint supplied.

March 2011: I taught a class, Advanced Felony Sentencing, with Judge Gregg Prickett for the Administrative Office of the Courts, in Burbank, California. I spoke about the intricacies of the California felony sentencing scheme. PowerPoint supplied.

March 8, 2011: I attended a program, "What if" at Northridge Academy in conjunction with the San Fernando Valley Bar Association, in Northridge, California. I spoke about my path to becoming a judge. I have no notes, transcript or recording. The address of the San Fernando Valley Bar Association is 5567 Reseda Boulevard, Suite 200, Tarzana, California 91356.

January 2011: I taught a class, Jury Trial Management, with Judge Linda Lofthus, for the Administrative Office of the Courts' Criminal Law Orientation, in San Francisco, California. I spoke about the things a trial judge needs to balance to efficiently preside over jury trials. PowerPoint supplied.

January 2011: I taught a class, Pre-Trial Discovery, for the Administrative Office of the Courts' Criminal Law Orientation, in San Francisco, California. I reviewed the discovery obligations of the parties in criminal cases through the use of hypotheticals. PowerPoint and outline supplied.

August 25, 2010: I held a Power Lunch with high school students to educate them about the judicial system, in Los Angeles, California. I created a Legal Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. I used the PowerPoint supplied for the February 23, 2012 event.

August 12, 2010: I taught Making An Effective Record with Justice Richard D. Fybel, at the B.E. Witkin Judicial College, in San Jose, California. I spoke about ways a trial judge can articulate matters on the record to ensure a better record. PowerPoint supplied.

August 9, 2010: I taught Documentary and Electronic Evidence with Judge Mary Thornton House, at the B.E. Witkin Judicial College, in San Jose, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

July 21, 2010: I spoke on a panel for the Pepperdine Alumni Association, Los Angeles Chapter, Westside Industry Law Luncheon, in Beverly Hills, California. I spoke about the litigative process from a judge's perspective. I have no notes, transcript, or recording. The address of the Pepperdine School of Law Alumni Affairs Office is 24255 Pacific Coast Highway, Malibu, California 90263.

May 18, 2010: I taught a class, Courtroom Technology, for the Los Angeles Superior Court Judicial Education Seminars, in Los Angeles, California. PowerPoint supplied.

May 1, 2010: I facilitated a discussion on best practices among criminal law judges for the California Judges Association, Mid-year Meeting, in Palm Springs, California. I have no notes, transcript, or recording. The address of the Association is 2520 Venture Oaks Way, Suite 150, Sacramento, California 95833.

April 28, 2010: I held a Power Lunch with high school students to educate them about the judicial system, in Los Angeles, California. I created a Legal Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. I used the PowerPoint supplied for the February 23, 2012 event.

March 24, 2010: I held a Power Lunch with high school students to educate them about the judicial system, in Los Angeles, California. I created a Legal Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. I used the PowerPoint supplied for the February 23, 2012 event.

February 25, 2010: I taught a class, Age Old Protocols for New Age Evidence, with Judge Mary Thornton House, for the Los Angeles Superior Court Judicial



Education Seminars, in Los Angeles, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

February 2010: I taught a class, Search & Seizure, for the Administrative Office of the Courts, in San Francisco, California. I reviewed search and seizure issues through the use of hypotheticals. PowerPoint supplied.

January 27, 2010: I taught a class on Courtroom Technology with Judge Daniel Buckley, in Los Angeles, California. I spoke about the various technological resources available to a judge to increase efficiency. PowerPoint supplied.

December 4, 2009: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. I have no notes, transcript or recording, but press coverage is supplied. The address of Pepperdine School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

November 23, 2009: I taught a class on Dissolution of Partnerships and Small Corporations, with Judge Stan Reichert, for the Trial Judicial Attorney Institute, in Long Beach, California. I spoke about the California laws that apply to dissolution of partnerships. PowerPoint supplied.

October 28, 2009: I taught a class, Dealing with Difficult Attorneys, for the Administrative Office of the Courts, in Los Angeles, California. I spoke about the positive and negative controls a trial judge may employ when dealing with difficult attorneys, including sanctions and contempt. PowerPoint and other materials supplied.

August 10, 2009: I taught Documentary and Electronic Evidence with Judge Mary Thornton House, at the B.E. Witkin Judicial College, in San Jose, California. I spoke about evidentiary foundations for electronic evidence. PowerPoint supplied.

June 2009: I taught a class, Common Motions, for the Administrative Office of the Courts, in San Francisco, California. I reviewed the different types of motions typically seen by a criminal trial judge and specific rules regarding those motions. PowerPoint and Marsden motion checklist supplied.

June 2009: I taught a class, Evidence for Criminal Bench Officers, for the Administrative Office of the Courts, in San Francisco, California. I reviewed the rules of evidence through the use of hypotheticals. PowerPoint supplied.

June 2009: I taught a class, Arraignments and Bail, for the Administrative Office of the Courts, in San Francisco, California. I reviewed the requirements for

arraignments and rules regarding setting bail in criminal cases. PowerPoint supplied.

June 2009: I taught a class, Pleas in Criminal Cases, for the Administrative Office of the Courts, in San Francisco, California. I reviewed the requirements for a valid guilty plea in criminal cases. PowerPoint supplied.

April 15, 2009: I served on a Diversity in the Judiciary Panel for the South Asian Bar Association of Southern California, in Los Angeles, California. I spoke about my path to the bench. I have no notes, transcript, or recording. The address of the Association is P.O. Box 4587, Cerritos, California 90703.

December 8, 2008: I held a Power Lunch with high school students to educate them about the judicial system. The Power Lunch was held at Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012. I created a Legal Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. I used the PowerPoint supplied for the February 23, 2012 event.

December 4, 2008: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. I have no notes, transcript or recording, but press coverage is supplied. The address of Pepperdine School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

November 4, 2008: I taught a class, Dealing with Difficult Attorneys, for the Los Angeles Superior Court Judicial Education Seminars, at Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012. I spoke about the positive and negative controls a trial judge may employ when dealing with difficult attorneys, including sanctions and contempt. PowerPoint supplied.

April 28, 2008: I held a Power Lunch with high school students to educate them about the judicial system. The Power Lunch was held at Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012. I created a Legal Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. I used the PowerPoint supplied for the February 23, 2012 event.

January 2008, April 2008: I participated in the Constitutional Rights Foundation (CRF) Mock Trial Program. I coached Mock Trial teams in La Jolla and Norwalk, California and presided over mock trial proceedings, in Los Angeles, California. I have no notes, transcript, or recording. The address of CRF is 601 South Kingsley Drive, Los Angeles, California 90005.

December 6, 2007: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. I have no notes, transcript or recording. The address of Pepperdine School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

September 10, 2007: I taught a class, Dealing with Difficult Attorneys, for the Los Angeles Superior Court Judicial Education Seminars, in Los Angeles, California. I spoke about the positive and negative controls a trial judge may employ when dealing with difficult attorneys, including sanctions and contempt. I used the PowerPoint supplied for the November 4, 2008 class.

July 2007: I taught a class, Dealing with Difficult Attorneys, for the Los Angeles Superior Court Judicial Education Seminars, in Los Angeles, California. I spoke about the positive and negative controls a trial judge may employ when dealing with difficult attorneys, including sanctions and contempt. I used the PowerPoint supplied for the November 4, 2008 class.

April 25, 2007; October 17, 2007; November 28, 2007: I held a Power Lunch with high school students to educate them about the judicial system, in Los Angeles, California. I created a Judicial Jeopardy game to help educate the students. My remarks were aimed at running the game and calling upon students to provide the questions to the answers. PowerPoint supplied.

December 2006: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. I have no notes, transcript or recording. The address of Pepperdine School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

June 1, 2005: At the request of the United States Attorney, I participated in a panel discussion at the Global Security and the Law Conference, hosted by the Los Angeles Terrorism Early Warning Group, in Santa Monica, California. I spoke about the misconceptions of the United States Patriot Act. I have no notes, transcript, or recording.

March 2005: I taught a course on Trial Practice at the National Advocacy Center, in Columbia, South Carolina. I lectured on the various components of a jury trial and provided critiques for the students. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 2004: I taught a course on Courtroom Technology at the National Advocacy Center, in Columbia, South Carolina. I lectured on the various components of a jury trial and provided critiques for the students. I have no notes, transcript or

recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 2004: I taught a course on Trial Practice at the National Advocacy Center, in Columbia, South Carolina. I lectured on the various components of a jury trial and provided critiques for the students. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 2003: I taught a course on Trial Practice at the National Advocacy Center, in Columbia, South Carolina. I lectured on the various components of a jury trial and provided critiques for the students. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 2002: I taught a course on Wiretaps at the National Advocacy Center, in Columbia, South Carolina. I spoke about the requirements for obtaining a federal wiretap. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 2001: I taught a course on Trial Practice at the National Advocacy Center, in Columbia, South Carolina. I lectured on the various components of a jury trial and provided critiques for the students. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 1998: I taught young students about the legal system when I participated in Project L.E.A.D. The school was located in Pasadena, California. I coordinated a tour to the United States District Court, in Los Angeles, California, introducing the young students to the legal system. I have no notes, transcript or recording.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Judith Lewis, *A Terrible Thing to Waste*, LOS ANGELES WEEKLY, Mar. 1, 2007. Copy supplied.

Jennifer Hahn, *Patriot Games*, LA City Beat, May 15, 2005. Copy supplied.

David Rosenzweig, *Student Is Guilty in SUV Bombing*, LOS ANGELES TIMES, Nov. 20, 2004. Copy supplied.

Matt Krasnowski, *Man Guilty in Environmentalist Firebombing of SUV*

*Dealership*, SAN DIEGO UNION-TRIBUNE, Nov. 20, 2004 (quotes reprinted in multiple outlets). Copy supplied.

Steve Berry, *When Drug Dealers Move In Next Door*, LOS ANGELES TIMES, May 28, 2000. Copy supplied.

Inger Sandal, *Ex-Tucson Cop's Betrayal of Trust in Drug Case Brings Life Sentence*, ARIZ. DAILY STAR, Jan. 21, 2000. Copy supplied.

Hudson Sangree, *Ex-Agent Convicted in Drug Case*, LOS ANGELES TIMES, Oct. 22, 1999. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On June 7, 2005, then-Governor Arnold Schwarzenegger appointed me to the Los Angeles Superior Court. As a Superior Court judge, I am empowered to preside over all disputes filed in the County of Los Angeles. I was assigned to preside over primarily criminal cases. I hear criminal matters filed by both the Los Angeles City Attorney and Los Angeles District Attorney's Office, from filing through trial. In approximately 2007, I was reelected without opposition.

In August 2010, Chief Justice Ronald George of the California Supreme Court appointed me to sit as an appellate justice *pro tempore*. I sat as a temporary justice in District Two, Division Eight. I reviewed briefs and writs, participated in writ conferences, and drafted opinions in all areas of the law, including criminal, civil, probate, juvenile dependency and juvenile delinquency. I participated in oral arguments and conferences after those arguments.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

During my seven years as a Los Angeles Superior Court judge, I have presided over thousands of cases, including approximately 150 jury trials and three bench trials.

- i. Of these, approximately what percent were:

jury trials:	95%
bench trials:	5%
civil proceedings:	1%
criminal proceedings:	99%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

People v. Gonzalez, 2011 WL 438107 (2011)  
People v. Linares, 2011 WL 386848 (2011)  
In re Jose M., 2011 WL 105875 (2011)  
People v. Galarze, 2011 WL 6591 (2011)  
People v. Lopez, 2010 WL 5158875 (2010)  
People v. Diaz, 2010 WL 5142193 (2010)  
In re L.F., 2010 WL 4984270 (2010)  
Wilson v. Middleton, 2010 WL 4984327 (2010)  
People v. DeSantiago, 2010 WL 4760661 (2010)  
New Star Realty, Inc. v. Park, 2010 WL 4653920 (2010)  
People v. Bojorquez, 2010 WL 4631301 (2010)  
Tong v. Rucker, 2010 WL 4616496 (2010)  
People v. Stuart, 2010 WL 4616657 (2010)  
In Re Alejandro M., 2010 WL 4616828 (2010)  
Citizens Business Bank v. Carrano, 189 Cal. App. 4th 1200 (2010)  
People v. Smith, 2010 WL 4355809 (2010)  
People v. Vega, 2010 WL 4118497 (2010)  
People v. Gonzalez, 2010 WL 4029195 (2010)  
In re Juliet G., 2010 WL 3863248 (2010)  
In re Dakota M., 2010 WL 3720681 (2010)

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. People v. Jordan, Los Angeles Superior Court Case ("LASC") No. VA100986 (2008)

Jordan was convicted of four counts of attempted murder, one count of use of a destructive device with intent to commit murder and one count of arson of an inhabited structure. At approximately 2:00 a.m. on May 13, 2007, Defendant threw a Molotov cocktail into the house of his wife. His wife, her son and daughter, and Jordan's young daughter were all inside the home at the time. Everyone escaped without significant injuries. The condominium sustained damage in the amount of \$330,000. Jordan had prior convictions for domestic violence and serious or violent felonies all directed towards his wife. The admissibility of the prior convictions was litigated. After a three-week trial, Jordan was convicted. I sentenced Jordan to multiple concurrent life sentences with the possibility of parole. On appeal, the appellate court found that the count of attempted murder was a lesser included offense of another count, lighting a destructive device with the intent to commit murder. Accordingly, the court reversed defendant's conviction for attempted murder because it was a lesser included offense.

Counsel for the People:  
Deputy District Attorney Islam Ramadan  
12720 Norwalk Boulevard, Room 201  
Norwalk, California 90650  
562.807.7475

Counsel for Jordan:  
Deputy Public Defender Enrique Monguia  
429 Bauchet Street, Suite 204  
Los Angeles, California 90012  
213.974.9929

2. People v. Gonzalez, LASC Case No. VA095095 (2008)

Defendants, alleged gang members, were charged with the murder of a rival gang member. In addition, the People sought a gang enhancement, claiming that defendants acted to benefit a gang. Gonzalez claimed that he went to a party to pick up his sister when the shooting occurred and did not see who shot the victim. An evidentiary dispute arose about the different primary activities of the gang as opposed to the pattern of criminal activity under California Penal Code section 186.22. After a five-week trial, the jury was unable to reach a verdict. The matter was retried by a different judge.

Counsel for the People:  
Deputy District Attorney Alfred Coletta  
210 West Temple Street  
Los Angeles, California 90012  
213.974.3920

Counsel for Gonzalez:  
Joseph Gutierrez  
714 West Olympic Boulevard, Suite 450  
Los Angeles, California 90015  
213.747.4807

Counsel for Urrea:  
Steve Escovar  
Escovar & Avila, LLP  
78 Orange Place  
Pasadena, California 91105  
626.577.7700

3. People v. Jones, LASC Case No. VA095591 (2007)

Jones was charged with attempted robbery and indecent exposure in connection with his attempt to rob the Dollar Market. Jones previously had been convicted of four separate robberies, all serious or violent felonies, thereby subjecting himself to 25 years to life in prison if convicted. The defendant argued that the court should exercise its discretion to strike the prior convictions. Based upon his prior robbery convictions, I sentenced defendant Jones to 25 years to life in prison. The conviction was affirmed on appeal. See 2008 WL 4712758.

Counsel for the People:  
Deputy District Attorney Frank Dunnick  
210 West Temple Street  
Los Angeles, California 90012  
213.974.6757

Counsel for Jones:  
William McKinney  
880 West First Street, Suite 302  
Los Angeles, California 90012  
213.480.6220

4. People v. Salcedo, LASC Case No. VA096287 (2007)

Salcedo was charged with intimidating a witness in connection with a pending murder trial. It was also alleged that his conduct was in association with or for the benefit of a criminal street gang. Salcedo's father was standing trial for murder and Salcedo was alleged to have spoken to a potential witness in the hall, reminding the witness that he (Salcedo) was a member of the Orange Street Locos. Salcedo testified that he was no longer a member of the Orange Street Locos gang, and did not intimidate the witness. Salcedo was acquitted.

Counsel for the People:  
Deputy District Attorney Douglas Herring  
Middlesex County Prosecutor's Office  
25 Kirkpatrick Street, 3rd Floor  
New Brunswick, New Jersey 08901  
732.745.7434

Counsel for Salcedo:  
Eugene Mathews  
3330 Barham Boulevard, #208  
Los Angeles, California 90078  
213.251.1029



5. People v. Martin, LASC Case No. BA324894 (2010)

Martin was charged in this capital murder case with murdering his victim in connection with a robbery. Martin approached the victim at a local restaurant and attempted to rob her by ripping off her gold necklace. He then shot her and fled the scene, firing two shots toward a witness who was watching from his apartment window. Martin was an active gang member at the time. The two special circumstances making this a capital case were the commission of the murder in connection with a robbery and the commission of the murder by an active gang member, for the benefit of the gang. Defendant sought to bifurcate the special circumstances from the underlying crimes. I denied the motion to bifurcate, in part because the underlying facts were inextricably intertwined with special circumstances. The jury convicted Martin. After conviction, defendant argued that the two counts were subject to the prohibition against multiple punishments pursuant to California Penal Code section 654. I sentenced defendant to life in prison without the possibility of parole.

Counsel for the People:  
Deputy District Attorney Raine Ritchey  
Los Angeles County District Attorney's Office  
210 West Temple Street  
Los Angeles, California 90012  
213.974.7166

Counsel for Martin:  
Deputy Public Defender Jorge Guzman  
Public Defender's Office  
210 West Temple Street  
Los Angeles, California 90012  
213.974.2811

6. People v. Battle, LASC Case No. BA364796 (2010)

Battle was charged with robbing his friend of his cellular telephone. Battle allegedly brandished a razorblade and threatened his friend. Fearing for his safety, the friend testified that he gave Battle his cellular telephone. Throughout the trial there were hearings regarding Battle's mental state, and the admissibility of mental health issues. The jury acquitted Battle.

Counsel for the People:  
Deputy District Attorney Christopher K. Baker  
Los Angeles County District Attorney's Office  
210 West Temple Street, 18th Floor  
Los Angeles, California 90012  
213.974.3700

Counsel for Battle:  
 Deputy Public Defender Ann Haigwood  
 Public Defender's Office  
 210 West Temple Street, 19th Floor  
 Los Angeles, California 90012  
 213.974.2811

7. Citizens Business Bank v. Carrano, B216632, 189 Cal. App. 4th 1200 (2010)

The trustee of the Papaz Family Trust filed suit in Los Angeles Superior Court seeking an order ascertaining beneficiaries and determining entitlement to distribution of trust assets. Carrano claimed he was entitled to receive funds under the trust because he was the biological grandson of Charles and Serena Papaz. He admitted that he was born out of wedlock. The facts were undisputed. The trial court found the trust instrument's definition of "issue" ambiguous and thereby looked to the intent of the grandparents. On *de novo* review, I wrote an opinion for the Court of Appeal reversing the trial court and finding that "issue," as defined by the Papaz Family Trust, was not ambiguous. As a result, Carrano was entitled to receive benefits under the trust instrument.

Counsel for Appellant Carrano:  
 Karl W. Schoth  
 Schoth Creyaufmiller & Associates  
 1905 East Route 66, #102  
 Glendora, California 91740  
 626.963.7161

Counsel for Respondent Kazanjian:  
 Michael J. Emling  
 Emling Forensics  
 333 South Anita Drive, Suite 300  
 Orange, California 92868  
 562.296.4050

8. People v. Heredia, LASC Case No. PA066451 (2011)

Heredia was charged with assault with a deadly weapon for his attack upon a fellow party guest. Heredia attended the party and got into a fight with his victim. In connection with the fight, Heredia shouted "F\*\*\* San Fer" a reference to a San Fernando gang. He perceived his victim to be a rival gang member and stomped his victim with his shod feet. During the trial, defense counsel attempted to mitigate the charges by arguing that soft-soled shoes (i.e., tennis shoes) could not be a dangerous or deadly weapon as a matter of law. Defendant also argued that the statement "F\*\*\* San Fer" could not support a gang enhancement. The jury convicted Heredia but rejected the deadly or dangerous weapon enhancement. I

placed defendant on three years formal probation on the condition he serve 365 days in the Los Angeles County jail. The Court of Appeals affirmed the conviction. See 2011 WL 5080144.

Counsel for the People:  
Deputy District Attorney Jeffrey Illions  
Los Angeles County District Attorney's Office  
210 West Temple Street  
Los Angeles, California 90012  
323.780.2032

Counsel for Heredia:  
Michael Schensul  
Alternate Public Defender's Office  
35 Hall of Records  
320 West Temple Street  
Los Angeles, California 90012  
213.744.3005

9. People v. Herrera, LASC Case No. PA067016 (2011)

Herrera stayed in the front house of a duplex in San Fernando. Herrera sexually abused two minors. Herrera was charged with multiple counts of lewd and lascivious acts upon a minor. During the trial, issues as to the competency of the two victims arose. I held hearings to determine whether the young victims could provide competent testimony consistent with California Evidence Code. The jury convicted Herrera. I sentenced defendant to 55 years to life in prison. The Court of Appeal affirmed the convictions but revised the Abstract of Judgment to reflect an additional 58 days credit as conduct credits pursuant to Penal Code Section 4019.

Counsel for the People:  
Deputy District Attorney Laura Knight Jackson  
Los Angeles County District Attorney's Office  
900 Third Street  
San Fernando, California 91340  
818.898.2511

Counsel for Herrera:  
Deputy Public Defender Ralf Jacobsen  
Public Defender's Office  
900 Third Street

San Fernando, California 91340  
818.898.2545

10. In re Gay, CASC Case No. S130263 (2011)

Gay was convicted of murdering a police officer who had conducted a traffic stop on the car in which he was a passenger. The driver, a co-defendant, had passed Gay a gun to shoot the officer in order to avoid arrest for a series of robberies. The jury convicted Gay and imposed the death penalty. The California Supreme Court affirmed the conviction upon automatic appeal. Later, a habeas proceeding granted a new penalty phase. A jury imposed the death penalty in the second penalty phase. After a federal habeas petition was filed, the matter was returned to the California Supreme Court to answer certain questions regarding the guilt phase. The California Supreme Court then requested that I answer five questions surrounding trial counsel's effectiveness and hold evidentiary hearings regarding potential defenses, including making credibility determinations regarding any potential defense witness. In addition, the California Supreme Court asked that I determine whether any conflict of interest existed between trial counsel and his client because defense counsel was then being investigated by the District Attorney's Office for embezzlement. A status conference and discovery hearing were held on September 20, 2012. The evidentiary hearing tentatively is set for 2013.

Counsel for the People:  
Deputy District Attorney John Colello  
Deputy District Attorney Lawrence Morrison  
Deputy District Attorney Renee Rose  
Deputy District Attorney Brentford Ferreira  
210 West Temple Street  
Los Angeles, California 90012  
213.974.3563

Counsel for Gay:  
Gary D. Sowards  
McBreen & Senior  
1900 Avenue of the Stars, 11th Floor  
Los Angeles, California 90067  
310.552.5300

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Citizens Business Bank v. Carrano, 189 Cal. App. 4th 1200 (2010)

Counsel for Appellant Carrano:  
Karl W. Schoth  
Schoth Creyauftmiller & Associates  
1905 East Route 66, #102  
Glendora, California 91740  
626.963.7161

Counsel for Respondent Kazanjian:  
Michael J. Emling  
Emling Forensics  
333 South Anita Drive, Suite 300  
Orange, California 92868  
562.296.4050

2. People v. Gonzalez, 2011 WL 438107 (2011)

Counsel for the People:  
Deputy Attorney General Jamie L. Foster  
Deputy Attorney General Dana M. Ali  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, California 90013  
213.897.2000

Counsel for Gonzalez:  
Edward H. Schulman  
9420 Reseda Boulevard, Suite 530  
Northridge, California 91324  
818.363.6906

3. People v. Linares, 2011 WL 386848 (2011)

Counsel for the People:  
Deputy Attorney General James William Bilderback, II  
Deputy Attorney General Steven E. Mercer  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, California 90013  
213.897.2000

Deputy District Attorney Brentford Ferreira  
Deputy District Attorney Susan K. Dozier  
Los Angeles District Attorney's Office  
210 West Temple Street, 18th Floor

Los Angeles, California 90012  
213.974.5911

Counsel for Linares:  
Edward Haggerty  
20955 Pathfinder Road, Suite 100  
Diamond Bar, California 91765  
909.843.6488

4. In re Alejandro M., 2010 WL 4616828 (2010)

Counsel for Los Angeles County Department of Children and Family  
Services:  
Assistant County Counsel Judith Luby  
10008 National Boulevard, Suite 305  
Los Angeles, California 90012  
310.433.8898

Counsel for Alejandro M.:  
Neale Gold  
402 West Broadway, Suite 400  
San Diego, California 92101  
858.344.0747

5. In re L.F., 2010 WL 4984270 (2010)

Counsel for the People:  
Deputy Attorney General Susan Sullivan Pithey  
Deputy Attorney General Shira Seigle  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, California 90013  
213.897.2000

Counsel for L.F.:  
Mary Bernstein  
1223 Wilshire Boulevard, Suite 557  
Santa Monica, California 90403  
310.395.4640

6. New Star Realty, Inc. v. Park, 2010 WL 4653920 (2010)

Counsel for New Star Realty:  
Wayne Yee  
3030 West Eighth Street, Suite 405

Los Angeles, California 90005  
213.716.6635

Counsel for Park:  
Eric C. Demler  
Kaiser, Swindells & Eiler  
444 West Ocean Boulevard, Suite 900  
Long Beach, California 90802  
562.590.8471

7. Tong v. Rucker, 2010 WL 4616496 (2010)

Counsel for Tong:  
Janice Mazur  
William Mazur Jr.  
Mazur & Mazur  
13465 Camino Canada  
El Cajon, California 92021  
800.383.5002

In Propria Persona:  
Edward Rucker  
1717 Fourth Street, 3rd Floor  
Santa Monica, California 90401  
310.928.6620

8. People v. DeSantiago, 2010 WL 4760661 (2010)

Counsel for the People:  
Deputy Attorney General Roberta L. Davis  
Deputy Attorney General Marc A. Kohm  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, California 90013  
213.897.2000

Counsel for DeSantiago:  
Eric R. Larson  
Law Offices of Eric R. Larson  
330 J Street, Suite 609  
San Diego, California 92109  
619.238.5566

9. People v. Gonzalez, 2010 WL 4029195 (2010)

Counsel for the People:  
Deputy Attorney General Susan D. Martynec  
Deputy Attorney General Lance E. Winters  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, California 90013  
213.897.2000

Counsel for Gonzalez:  
Jeralyn Keller  
Young & Young  
790 East Colorado Boulevard, Suite 900  
Pasadena, California 91101  
626.683.1233

10. In re Dakota M., 2010 WL 3720681 (2010)

Counsel for Los Angeles County Department of Family and Children  
Services:  
Deputy County Counsel Denise M. Hippach  
County Counsel's Office  
201 Center Plaza Drive, Suite 1  
Monterey Park, California 91754  
661.945.6454

Counsel for Dakota M.:  
Marissa Coffey  
Law Offices of Marissa Coffey  
P.O. Box 998  
Sierra Madre, California 91025  
626.355.7975

e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

People v. Martin, 2011 WL 3307916 (2011). Martin was convicted of murder and attempted murder of two separate victims. I stayed imposition of sentence on one



count, while at the same alternatively running the sentence fully concurrently. The Court of Appeal remanded the case for clarification as to whether I was staying imposition of sentence as to the count, or running the sentence fully concurrently. In addition, Martin was found to have fired a weapon causing great bodily injury, under Penal Code section 12022.53(d), discharged a firearm, in violation of Penal Code section 12022.53(c) and personal use of a firearm, in violation of Penal Code section 12022.53(b). I imposed the greatest sentence as required by law and failed to impose the other sentences as lesser enhancements. The Court of Appeal remanded the issue for me to stay imposition of the firearm enhancements pursuant to Penal Code section 12022.53(f), not Penal Code section 654.

People v. Mendoza, 2009 WL 1100364 (2009). The People alleged that Mendoza committed burglary. In investigating the case, the police handcuffed and interviewed Mendoza. He made incriminating statements. Mendoza sought to suppress such statements, alleging a violation of Miranda v. Arizona. After a hearing, I determined that Mendoza was not in custody. The Court of Appeal disagreed and reversed the conviction.

People v. Jordan, 2010 WL 94006 (2010). After a three-week trial, Jordan was convicted of attempted murder and lighting a destructive device with intent to commit murder, and arson. On appeal, the appellate court found that the count of attempted murder was a lesser included offense of another count, lighting a destructive device with the intent to commit murder. Accordingly, the court reversed defendant's conviction for attempted murder because it was a lesser included offense.

People v. Rangel, 2011 WL 2150716 (2011). Defendant was convicted of three counts of lewd and lascivious acts upon a minor, as well as three counts of forcible rape. After conviction, Rangel argued that it was error not to have instructed the jury on a lesser included offense, attempted rape. The Court of Appeal agreed and affirmed the convictions with the modification that it substituted attempted rape for forcible rape. The court found that the jury necessarily would have convicted Rangel of attempted rape.

Other than the above cases, to my knowledge, I have not been reversed by the California Court of Appeal or California Supreme Court. Some of my decisions were affirmed with minor modifications by the California Court of Appeal.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I file few written opinions as a Los Angeles Superior Court judge. Typically, I write written opinions in habeas corpus petitions or other post-conviction matters. The opinions are unpublished and stored in the original court files. When I served

as an appellate justice pro tem, I authored 20 opinions in all areas of the law, including criminal law, probate, juvenile dependency, juvenile delinquency and civil. Those opinions are officially unpublished but available on Westlaw.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

My husband serves as a Deputy District Attorney for the County of Los Angeles. I am prepared to recuse myself from any case he has handled pursuant to California Code of Civil Procedure section 170.1(a)(6). In all cases that come before me, I disclose that I am married to a Deputy District Attorney. I ask the parties to sign a disclosure form that asks the litigants to provide the court with any facts justifying recusal. I have not received a request from a party to recuse myself.

In July 2011, People v. Dykstra, PA070678 (2011) was assigned to me. My husband participated in the investigation of some of the charges. As a result, I *sua sponte* recused myself. I have not recused myself in any other case.

California Code of Civil Procedure section 170.6 provides that any party may issue a peremptory challenge against a judge for any reason. The time within which to bring a challenge to a judge is limited. To my knowledge, I have received such a challenge three times, once by the Public Defender's Office, once by the People, and once by a privately retained defense attorney. I struck the challenge by the privately retained defense attorney as untimely. The case later resolved.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. I have not had any unsuccessful candidacies for elective office or nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2002, my husband was the Republican nominee seeking to become a member of the California State Assembly, for the 44th district. Although I did not have a formal title or responsibilities, I attended fund raisers, created flyers and provided financial support.

I have also endorsed several judicial candidates. To the best of my recollection, I endorsed Judges Sean Coen, Jarrod Moses, Lynne Olson, Maria Hamar, and Sanjay Kumar. I served on a committee to reduce Judge Sanjay Kumar's campaign debt. I created a flyer for the event and attended the debt retirement party.

**16. Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk:

I did not serve as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates:

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1995  
Morrison & Foerster  
555 West Fifth Street, Suite 3500  
Los Angeles, California 90017  
Associate

1995 – 2005  
United States Attorney's Office  
312 North Spring Street  
Los Angeles, California 90012  
Senior Litigation Counsel, Organized Crime Strike Force (2003 – 2005)  
Deputy Chief, General Crimes Section (1999 – 2003)  
Assistant United States Attorney, Major Narcotics Section (1996 – 1999)  
Assistant United States Attorney, General Crimes Section (1995 – 1996)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

In 1990, after graduating from law school, I began working for Morrison & Foerster as a litigation associate. My diverse practice focused on general business, employment, intellectual property, bankruptcy and California Environmental Quality Act litigation. I handled all aspects of civil litigation, including taking and defending depositions, drafting and arguing motions for summary judgment, and preparing witnesses for trial or arbitration. Specifically, I handled over 20 depositions, argued over 30 substantive motions in various courts, and conducted approximately five arbitrations.

In February 1995, I left Morrison & Foerster and began working for the United States Attorney's Office. From 1995 to 2005, I served in the General Crimes Section, Major Narcotics Section and the Violent and Organized Crime Section. I handled all phases of criminal prosecutions, including seeking indictments, writing and arguing motions, trying cases, writing appellate briefs, and arguing in the court of appeals. I also served as Deputy Chief of the General Crimes Section. As a supervisor, I was responsible for training and supervising all new Assistant United States Attorneys. I oversaw all the trials in the General Crimes Section, including advising on trial strategy, reviewing motions, and critiquing opening statements and closing arguments. The cases included gun cases, all types of violent crimes, narcotics cases and all types of fraud cases.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Morrison & Foerster, I represented large businesses, as well as individuals on a pro bono basis. I specialized in business litigation matters, intellectual property and environmental cases. As an Assistant United States Attorney, my client was the United States. I specialized in complex narcotics and money laundering prosecutions as well as wiretaps.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

One hundred percent of my practice has been in litigation. From 1990 to 1995, I appeared in court occasionally. From 1995 to 2005, I appeared in court frequently, almost daily.

- i. Indicate the percentage of your practice in:

1. federal courts:	70%
2. state courts of record:	30%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	33%
2. criminal proceedings:	67%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried 12 cases to verdict. Approximately four cases I tried as sole counsel. Approximately eight cases I tried as either chief counsel or co-counsel.

- i. What percentage of these trials were:
  1. jury: 90%
  2. non-jury: 10%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. United States v. Cottrell, CR 04-279-RGK (2004), U.S. District Court, Central District of California, Honorable Richard G. Klausner

Cottrell was charged with vandalizing and burning a Hummer dealership, using a Molotov cocktail. In addition, numerous other vehicles were spray painted with such terms as "SUV=Terrorism" "ELF" and "KILLER." Acting on its own, the Federal Bureau of Investigation arrested someone it believed to have committed the crime, who later was released. Based on an investigation of an e-mail sent by Cottrell, the agents and I traced the e-mail traffic, written in pseudonyms, back to Cottrell and linked him to the sometimes violent environmental organization, Earth Liberation Front. I conducted an extensive grand jury investigation, and I questioned numerous witnesses before the grand jury. As a result, a nine-count indictment was returned charging Cottrell with one count of conspiracy to commit arson, seven substantive counts of arson and one count of using a destructive device in connection with a crime of violence. This is the largest arson case ever indicted against a member of the Earth Liberation Front. The case proceeded to

jury trial where I selected the jury, examined the witnesses and made the opening statement. Cottrell was convicted and sentenced to 100 months in prison.

Co-Counsel for the United States:  
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United States Attorney's Office  
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Los Angeles, CA 90012  
213.894.2434

Jason deBretteville  
Sullivan & Cromwell, LLP  
1870 Embarcadero Road  
Palo Alto, CA 94303  
650.461.5600

Counsel for Cottrell:  
Marvin L. Rudnick  
42 East Colorado Boulevard, 2nd Floor  
Pasadena, CA 91105  
626.796.7799

W. Michael Mayock  
35 South Raymond Avenue  
Pasadena, CA 91105  
626.405.1465

2. United States v. Dickinson, CR 04-576-DDP (2004), U.S. District Court, Central District of California, Honorable Dean D. Pregerson

An unknown individual mailed a package to Ralphs Grocery Stores threatening to contaminate baby food if he did not receive \$180,000. The package contained samples of contaminated baby food and instructions for how to deliver the money and communicate agreement. Using grand jury subpoenas and witness interviews, we traced the package and ultimately obtained a video showing the suspect. I worked with law enforcement to set up a sting operation that identified Dickinson as the suspect. I wrote search warrants and, as a result, the computer used to draft the notes and one of the contaminants were seized from Dickinson. A two-count indictment charging Dickinson with extortion and tampering with consumer products was returned. Dickinson pleaded guilty and received five years in prison.

Counsel for Dickinson:  
Reuven Cohen  
Federal Public Defender's Office  
321 East Second Street

Los Angeles, CA 90012  
213.894.2854

3. United States v. Castro, CR 98-738-ABC (1998-2000), U.S. District Court, Central District of California, Honorable Audrey B. Collins

An intensive wiretap investigation into the Arellano-Felix narcotics trafficking cartel resulted in the seizure of over three tons of cocaine and \$15 million in narcotics proceeds. As lead counsel for the United States, I, along with the case agents, wrote wiretaps for over 29 telephones and 19 pagers over an 11-month period. Over 40 individuals were prosecuted by state and local authorities and nine defendants were indicted federally in a complex 24-count indictment. Castro, the highest ranking member of the Arellano-Felix narcotics trafficking organization ever arrested on U.S. soil, was among those indicted federally for operating a continuing criminal enterprise and laundering money. The case was extensively litigated and involved two interlocutory appeals to the Ninth Circuit. Many of the issues involved the conditions of confinement of defendant Castro. The defendants pled guilty and received sentences ranging from 10 to 18 years. In 1999, I was awarded the Drug Enforcement Administration Administrator's Award for Exceptional Service based upon my work in this case.

Co-Counsel for the United States:  
Timothy J. Searight  
United States Attorney's Office  
312 North Spring Street, 14th Floor  
Los Angeles, CA 90012  
213.894.2434

Counsel for Castro:  
Donald Randolph  
Randolph & Associates  
1717 Fourth Street, 3rd Floor  
Santa Monica, CA 90405  
310.395.7900

Counsel for defendant (I do not recall which one):  
Michael McDonnell  
418 East LaHabra Boulevard  
LaHabra, CA 90631  
562.694.3827

Counsel for defendant (I do not recall which one):  
Joseph Abraham, Jr.  
717 East San Antonio Street  
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915.544.7860



Counsel for defendant (I do not recall which one):  
 Hon. Alan Rubin  
 111 North Hill Street  
 Los Angeles, CA 90012  
 213.744.4061

4. United States v. Castro, SA CR 93-93(C)-GLT (1995-2004), U.S. District Court, Central District of California, Honorable Gary L. Taylor

This was a 14-week jury trial involving Crips gang member Castro's operation of a continuing criminal enterprise and his commission of a murder in furtherance of that enterprise. Castro was assisted in his illegal activities by defendants Galloway and Rios-Meza. All three went to trial. The case uniquely incorporated an unsolved historical murder into a narcotics conspiracy against Castro, one of the largest distributors of cocaine in the Compton area. Additional narcotics charges were leveled after historical analysis revealed that Castro's narcotics organization stretched from California to Virginia. I wrote and argued two interlocutory appeals, regarding whether the administrative forfeiture of drug proceeds violated the Double Jeopardy Clause. This led to the published opinion, United States v. Castro, 78 F.3d 453 (9th Cir. 1996), where the Ninth Circuit agreed with my argument and found that the administrative forfeiture of narcotics proceeds did not violate the Double Jeopardy Clause. I assisted in selecting the jury, examined witnesses and gave the closing argument. Ultimately, Castro was sentenced to 420 months in prison, Galloway was sentenced to 25 years in prison, and Rios-Meza was sentenced to seven years in prison. I then litigated the post-conviction appeals, writing the briefs and arguing before the Ninth Circuit. The convictions were affirmed. Castro's sentence was remanded to the district court for reconsideration in light of United States v. Ameline, 376 F.3d 967 (9th Cir. 2004).

Co-Counsel for the United States:  
 Uttam Dhillon  
 Fitzpatrick Hagood Smith & Uhl LLP  
 2525 McKinney Avenue, Suite 1400  
 Dallas, TX 75201  
 214.237.8400

Counsel for Juan Castro:  
 David Dudley  
 1800 Century Park East, Suite 600  
 Los Angeles, CA 90067  
 310.772.8400

Counsel for Galloway:  
 Donald Randolph

Randolph & Associates  
1717 Fourth Street, 3rd Floor  
Santa Monica, CA 90405  
310.395.7900

Counsel for Rios-Meza:  
William Pitman  
9401 Wilshire Boulevard, Suite 1250  
Beverly Hills, CA 90212  
310.28.0193

Counsel for Kipp Townsend:  
Michael Garey  
714 North Spurgeon  
Santa Ana, CA 92701  
714.834.0950

5. United States v. Parker, CR 98-749(C)-CAS (1997-2001), U.S. District Court, Central District of California, Honorable Christina A. Snyder

This investigation established, through the testimony of cooperating witnesses and unique markings on the cocaine, that Bureau of Narcotic Enforcement (BNE) Special Agent Parker stole 295 kilograms of cocaine from the Riverside BNE evidence vault. Through extensive grand jury examination of witnesses, I built evidence establishing that SA Parker's distribution network had stretched from the BNE evidence vault to Arizona, Nevada, and even Hawaii. Trial against Parker and two co-defendants resulted in Parker's conviction on a federal tax charge and a mistrial on the narcotics charge with only one vote in favor of guilt. I was co-counsel on the first trial and lead counsel on the retrial, at which we obtained convictions against Parker on all counts. I handled approximately 40 motions and four interlocutory appeals to the Ninth Circuit. The motions and interlocutory appeals regarded the admissibility of evidence, whether Parker's bail should be reduced and the use of technology during the trial. Parker was convicted and sentenced to life imprisonment.

Co-Counsel for the United States:  
Assistant United States Attorney Rebecca Lonergan  
1801 Wendy Way  
Manhattan Beach, CA 90266  
310.376.1519

Lizabeth A. Rhodes (retrial)  
United States Attorney's Office  
312 North Spring Street, 14th Floor  
Los Angeles, CA 90012  
213.894.3541

Counsel for Parker:  
 Richard Hamar  
 Hamar & Hamar  
 9454 Wilshire Boulevard, PH Gardens  
 Beverly Hills, CA 90210  
 310.550.0460

Counsel for Whitney:  
 Scott Furstman  
 2115 Main Street  
 Santa Monica, CA 90405  
 310.399.3259

Counsel for Gray:  
 Daniel Davis  
 9454 Wilshire Boulevard  
 Beverly Hills, CA 90212  
 310.659.5800

6. United States v. Wilcox, CR 00-634-CAS (1999-2000), U.S. District Court, Central District of California, Honorable Christina A. Snyder

After Special Agent Parker's narcotics conviction, the investigation centered on the role other law enforcement officers played in the burglary of the Riverside BNE evidence vault. Drug ledgers found in Parker's possession showed that proceeds from the cocaine sales had been split three different ways. I again pursued a grand jury investigation, and examined financial agents who created a painstaking financial analysis reflecting cash expenditures grossly exceeding reported income, and identified as a target California Highway Patrol (CHP) Officer Wilcox of Fresno, California. With the assistance of the United States Attorney's Office in the Eastern District of California, a federal grand jury indicted Officer Wilcox for structuring his bank transactions to avoid federal reporting requirements. I repeatedly interviewed Wilcox with the case agents and developed his cooperation. I negotiated his plea to conspiracy to possess with intent to distribute cocaine. As a result of Wilcox's cooperation and agreement to record undercover conversations, a grand jury indicted CHP Officer Ruelas, Parker's half-brother. Ruelas was charged both with distribution of the stolen kilograms of cocaine and conspiracy stemming from the home invasion robberies of known narcotics traffickers. Wilcox testified against Ruelas, who was convicted in 2001. During Ruelas' trial the admissibility of alibi evidence and rebuttal alibi evidence was hotly litigated. As a result of his cooperation, Wilcox was sentenced to five years in prison.

Co-Counsel for the United States:  
 Elizabeth A. Rhodes

United States Attorney's Office  
312 North Spring Street, 14th Floor  
Los Angeles, CA 90012  
213.894.3541

Counsel for Wilcox:  
Robert Wilkinson  
5260 North Palm Avenue  
Fresno, CA 93704  
559.432.5400

7. United States v. Wagner, CR 96-779(A)-RSWL (1996-2001), U.S. District Court, Central District of California, Honorable Ronald S.W. Lew

Wagner was originally indicted on one count for bank robbery. Later, I, along with the case agent, examined witnesses and linked Wagner to six other bank robberies, then sought a superseding indictment. I opposed Wagner's motions to produce grand juror selection records, to dismiss the indictment, and to challenge the conditions of his pretrial confinement. I tried the case in April 1998. Wagner was convicted on all counts and sentenced to 210 months in prison.

Co-Counsel for the United States:  
David Wright  
2068 Orange Tree Lane, Suite 216  
Redlands, CA 92374  
909.557.1250

Counsel for Wagner:  
Judith Rochlin  
10801 National Boulevard  
Los Angeles, CA 90064  
310.473.6208

8. City of Adelanto v. City of Victorville, et al., Los Angeles Superior Court, Nos. BS 020463, BS 020464, BC 067687, and BC 067686 (1992-1994), Los Angeles Superior Court, Honorable Robert O'Brien

In the early 1990s, several cities sought to redevelop George Air Force Base into the "High Desert International Airport." The City of Adelanto retained my firm in the ensuing litigation to block the redevelopment. The City argued that the Environmental Impact Report violated the California Environmental Quality Act. I reviewed lengthy portions of the Environmental Impact Report to determine whether it complied with the strict procedural requirements of the Act. On behalf of the City, I and other associates wrote the briefs requesting mandamus in the California Court of Appeal. The cases were settled in 1993 to 1994, after favorable judgments in the mandamus actions.

Co-Counsel for The City of Adelanto:  
Honorable Laurie D. Zelon  
California Court of Appeal  
300 South Spring Street  
Second Floor, North Tower  
Los Angeles, CA 90013  
213.830.7000

Counsel for the City of Victorville:  
Chris Garrett  
Latham & Watkins  
701 B Street, Suite 2100  
San Diego, CA 92101  
619.236.1234

9. Fetchik v. Circuit City Stores, Inc., Los Angeles Superior Court, No. BC 083622 (1993). Los Angeles Superior Court. Honorable Bernard Cooperman

Fetchik, seeking to represent a class of plaintiffs, challenged the Song Beverly Credit Card Act, claiming that Circuit City improperly asked for personal information when conducting customer credit card transactions. On behalf of Circuit City, I drafted an opposition to a motion for class certification, arguing that Circuit City's practice of asking for telephone information of anyone charging purchases on his credit card was more properly an individual action, not a class action. Specifically, we argued that individual issues predominated. Circuit City retained new counsel prior to disposition.

Co-Counsel for Circuit City:  
Beth Cranston  
1250 16th Street  
Santa Monica, CA 90404  
310.319.4503

Counsel for Fetchik:  
B. Daniel Lynch  
301 East Colorado Boulevard  
Pasadena, CA 91335  
626.796.3182

10. Kraszewski, et al. v. State Farm General Ins. Co., et al., CV 79-1281-TH (1990-1992), U.S. District Court, Northern District of California. Honorable Thelton Henderson

A plaintiff class obtained from federal court a finding that State Farm Insurance Companies discriminated against women in their hiring practices. In lieu of a

lump sum settlement, the court ordered 1,100 individualized claim hearings before special masters. In many of the claim hearings, I handled all discovery matters, written motions, and hearing preparations on behalf of State Farm. In one claim, I examined witnesses and presented evidence to the special master. My individual claim hearings were settled for a fraction of the requested damages. Later, the matter was settled globally.

Co-counsel for State Farm:  
The Honorable Maren Nelson  
Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012  
213.974.5581

Counsel for Corcorvelos:  
Guy Saperstein  
Susan Guberman-Garcia  
Saperstein, Goldstein, Demchak & Baller  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
510.763.9800

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Throughout my career, I have been involved in the Women Lawyers Association of Los Angeles. My involvement includes serving as a board member, planning and attending events, and interviewing and nominating the future leaders of the organization. I have also been involved in community outreach programs as a lawyer and judge, working to educate students about the legal system, mentoring students and informally speaking with students about the importance of education.

I have not performed any lobbying activities for any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Since approximately 1998, I have taught Trial Advocacy for Pepperdine University School of Law. Fall 2012 syllabus supplied.

From 1999 to 2004, I taught Trial Advocacy for Loyola Law School. I no longer have the syllabus for that class. In 2005, I began teaching Advanced Trial Advocacy for Loyola Law School. Spring 2012 syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

While I have no such commitments, and subject to ethical constraints and time obligations, I would like to continue to teach Trial Advocacy and/or Advanced Trial Advocacy for Pepperdine School of Law and Loyola Law School.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Generally speaking, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. More specifically, I would recuse myself from any case that I worked on, supervised, or

on which I was consulted as an Assistant United States Attorney. In addition, I am married to a Deputy District Attorney. If there were cases involving the matters which he has handled, I would recuse myself.

Further, upon learning of any situation that a party or observer might perceive or identify as an actual or potential conflict of interest, I would alert the parties to the situation in question, and solicit their views. I would also consult with my judicial colleagues on these issues.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would analyze the case to determine whether a conflict existed and whether disclosure or recusal would be appropriate. I would follow all applicable laws and ethical canons.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While an associate at Morrison & Foerster, I engaged in numerous pro bono cases. I routinely staffed Public Counsel, typically one evening per month. As a result, I provided legal advice to numerous indigent individuals. I also represented a number of indigent clients in landlord tenant matters arising out of Morrison & Foerster's partnership with Public Counsel. I participated in the representation of an indigent criminal defendant convicted of numerous fraud offenses. I wrote briefs and assisted the partner in a habeas corpus evidentiary hearing.

The committees upon which I serve are aimed at community outreach and civics education in our schools. My work frequently extends beyond work hours and includes speaking at local schools.

I am involved in various mentorship programs aimed at providing college and law students with a connection to the legal profession. These programs include the Mexican American Bar Association (MABA) Mentorship program, UCLA Mentorship program, and Pepperdine Mentorship program. The programs include interacting with students and providing them with a positive role model.

While serving on the LA Superior Court's Community Outreach Committee, I created the Power Lunch Program to enable students to interact positively with lawyers and judges. Through a partnership with WLALA, and funding from the State Bar Foundation and Judicature West Foundation, students are transported from their schools to the court for lunch and activities with lawyers and judges. The program culminates with a *Legal Jeopardy* game I created.



I have participated in the Constitutional Rights Foundation (CRF) Mock Trial Program. I have coached mock trial teams and presided over mock trial proceedings.

I taught young students about the legal system when I participated in Project L.E.A.D. I coordinated a tour to the United States District Court, introducing the young students to the legal system.

Through WLALA, I volunteer at the Downtown Women's Center. I speak at career day events at local high schools, colleges and law school.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On approximately April 6, 2012, I submitted my application to Senator Boxer's bi-partisan Judicial Advisory Committee for the Central District of California. On June 8, 2012, I met with the Committee.

Since July 17, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 14, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) O'Connell, Beverly R.	2. Court or Organization United States District Court, Central District of California	3. Date of Report 11/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  United States District Judge-- nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 11/14/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period  01/1/2011 to 10/31/2012
7. Chambers or Office Address  Los Angeles Superior Court 900 Third Street San Fernando, California 91340		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2012	Loyola Law School, agreement to serve as Adjunct Professor in 2013
2. 2012	Pepperdine School of Law, agreement to serve as Adjunct Professor 2012
3.	

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

**A. Filer's Non-Investment Income**
☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Loyola Law School -- teaching	\$6,600.00
2. 2012	Pepperdine School of Law -- teaching	\$3,286.00
3. 2012	Los Angeles Superior Court	\$190,000.00
4. 2011	Loyola Law School -- teaching	\$6,600.00
5. 2011	Pepperdine School of Law -- teaching	\$3,286.00
6. 2011	Los Angeles Superior Court	\$190,000.00
7. 2011	State of California -- Court of Appeal Pro Tem	\$2,151.00
8. 2010	Loyola Law School -- teaching	\$6,600.00
9. 2010	Pepperdine School of Law -- teaching	\$3,219.00
10. 2010	Los Angeles Superior Court	\$196,000.00
11. 2010	State of California -- Court of Appeal Pro Tem	\$5,400.00

**B. Spouse's Non-Investment Income** - If you were married during any portion of the reporting year, complete this section.

(Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2012	Los Angeles County District Attorney's Office - salary
2. 2011	Los Angeles County District Attorney's Office - salary
3.	
4.	

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.					
2.	Exempt				
3.					
4.					
5.					

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)
1. Apple stock	A	Dividend	L	U					
2. Am. Intel group stock	A	Dividend	J	U					
3. Atlas Pipeline Partners stock	A	Dividend	K	U					
4. BGC Partners stock	A	Dividend	K	U					
5. Bank of America stock	A	Dividend	K	U					
6. Calamos Strategic Total Return Fund	A	Dividend	J	U					
7. CSX Corp. stock	A	Dividend	J	U					
8. Chesapeake Graitte Water stock	C	Dividend	L	U					
9. Citigroup Inc. stock	A	Dividend	J	U					
10. Clean Energy Fuels stock		None	K	U					
11. CrossTex Energy stock	B	Dividend	K	U					
12. Discovery Laboratories stock		None	J	U					
13. EMC Corp. stock		None	J	U					
14. East West Bancorp. stock	A	Dividend	J	U					
15. Enerphus Corp. stock	A	Dividend	J	U					
16. Ford Motor corp. stock	A	Dividend	K	U					
17. Frontier Communications stock	A	Dividend	J	U					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$30,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. General Electric Corp. stock	A	Dividend	K	U					
19. Gemme Parts Co. stock	A	Dividend	J	U					
20. Healthcare Tr. America stock		None	J	U					
21. Heckman Corp. stock		None	J	U					
22. Huntsman Corp. stock	A	Dividend	K	U					
23. Intel corp. stock	A	Dividend	K	U					
24. Janus Capital Group stock	A	Dividend	J	U					
25. Kronos Worldwide stock	A	Dividend	K	U					
26. Leapfrog Ent. stock		None	K	U					
27. Lexington Realty Trust stock	A	Dividend	J	U					
28. Masco Corp. stock	A	Dividend	K	U					
29. Maxwell Tech. Inc. stock		None	J	U					
30. Merck & Co. stock	A	Dividend	K	U					
31. Mercury Gen. Ins. Co. stock	A	Dividend	J	U					
32. Microsoft Corp. stock	A	Dividend	K	U					
33. Mylan, Inc. stock		None	J	U					
34. National Tech. stock		None	K	U					

1. Income/Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I1 = \$15,001 - \$50,000,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. NGP Capital Resources stock	A	Dividend	J	U					
36. Nokia Corp. stock	A	Dividend	J	U					
37. NVIDIA Corp. stock		None	J	U					
38. OCZ Technology stock		None	J	U					
39. Qualcomm Inc. stock	A	Dividend	J	U					
40. Quicksilver Corp. stock		None	J	U					
41. RiteAid Corp. stock		None	J	U					
42. Sandisk Corp. stock		None	J	U					
43. Seadrill Ltd. stock	A	Dividend	K	U					
44. Senior Housing Properties stock	A	Dividend	J	U					
45. Staples Corp. stock	A	Dividend	J	U					
46. Starbucks Corp. stock	A	Dividend	L	U					
47. Synovus Financial Corp. stock	A	Dividend	J	U					
48. TFCP Capital Group stock	A	Dividend	K	U					
49. Uranium Energy Corp. stock		None	K	U					
50. Vanguard PRIMECAP fund	A	Dividend	K	U					
51. Vanguard Windsor II Fund	A	Dividend	J	U					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$250,001 - \$500,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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Date of Report

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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. Windstream Corp. stock	A	Dividend	J	U					
53. Claremont Univ. Graduate bond	B	Interest	K	U					
54. Huntington Mem. Hosp. municipal bond	B	Interest	K	U					
55. Huntington Mem. Hosp. municipal bond	B	Interest	K	U					
56. Cajon Valley Elem. School municipal bond	A	Interest	J	U					
57. California Public Works municipal bond	A	Interest	K	U					
58. Monrovia Library Proj municipal bond	A	Interest	K	U					
59. Orange CountySeries A municipal bond	A	Interest	K	U					
60. Oxnard Gas municipal bond	A	Interest	K	U					
61. Ventura County Unified School dist. municipal bond	A	Interest	K	U					
62. Woodside Elementary School municipal bond	A	Interest	K	U					
63. Chase Bank cash accounts	A	Interest	K	T					
64. Alestel Lunent stock		None							
65. Alcoa stock		None							
66. Altria Group Inc. stock		None							
67. American Axel Manuf. stock		None							
68. Ariad Pharmaceuticals stock		None							

1. Income Gain Codes (See Columns D1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$200,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	D = \$5,001 - \$15,000 I1 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$25,001 - \$50,000
2. Value Codes (See Columns C1 and C3)					
3. Value Method Codes (See Column C2)	U = Book Value				

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Name of Person Reporting	Date of Report
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)
69. Biocryst Pharmaceuticals stock		None							
70. Cisco Systems Inc. stock		None							
71. Commonwealth Reit (CWH)		None							
72. Consolidated Water Co. Ltd. stock		None							
73. Corporate Office stock		None							
74. Cyberdefender Corp. stock		None							
75. Energy Recovery stock		None							
76. FX Energy Inc. stock		None							
77. Finistar Corp. stock		None							
78. First Pactrust Bancorp. stock		None							
79. Guidance Software		None							
80. Hawaiian Elect. Ins. Inc. (HE) stock		None							
81. Huntington Baneshares, Inc. (HIBAN) stock		None							
82. ING stock		None							
83. Marsh & McLennan stock		None							
84. Mueller Water Products stock		None							
85. Office Depot stock		None							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Marker	

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. Philip Morris stock		None							
87. PDL Biopharmaceuticals Inc. stock		None							
88. Packaging Corp of America stock		None							
89. Paychex Inc. stock		None							
90. JC Penney stock		None							
91. Pepsico Inc. stock		None							
92. Pfizer Inc. stock		None							
93. Sanimina Sci. Corp. New (SANM) stock		None							
94. Standard Pacific Corp. stock		None							
95. Synovus Financial Corp. stock		None							
96. Telecom Corp. Ltd.		None							
97. Thompson Creek Metals stock		None							
98. Verizon Comm. stock		None							
99. Wells Fargo stock		None							
100. Alliance Bernstein stock		None							
101. CA St. RDFG	B	Interest							
102. CA St. EDL FAC Pepperdine municipal bond	A	Interest							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
 Page 11 of 14

Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
103. American Eagle Outfitters stock	A	Dividend							
104. Avon Products stock	A	Dividend							
105. CVR Partners stock	B	Dividend							
106. Flaherty & CRMRIMNE (PFO) stock	A	Dividend							
107. GAMCO stock	A	Dividend							
108. GENTEX stock	A	Dividend							
109. Genworth Financial stock		None							
110. KKR Financial Holdings stock	A	Distribution							
111. Kayne Anderson Energy	A	Dividend							
112. Eli Lilly stock	A	Dividend							
113. OPKO stock		None							
114. Oracle stock	A	Dividend							
115. Penn VA resource Partners	A	Dividend							
116. Provident energy stock	A	Dividend							
117. Rentech Nitrogen stock	A	Dividend							
118. Sprint Nextel stock		None							
119. Sandridge Miss. TR 1	A	Distribution							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$200,001 - \$1,000,000 K = \$13,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C7)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**

Page 12 of 14

Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
120. Teckay Tankers Inc. stock	A	Dividend							
121. Washington Mutual stock		None							
122. CA St. EDL municipal bond		None							
123. CA st. Series A municipal bond		None							
124. San Diego CA municipal bond		None							
125. Bristol Myers Squibb stock		None							
126. Newell Rubbermaid stock		None							
127. Easton Vance Limited stock		None							
128. Hugoton Royalty TR Tx (HGT) stock	A	Dividend							
129. Napco Security stock		None							
130. PWRSH Financial (PGF) stock		None							
131. Wendy's stock	A	Dividend							
132. CA Dept. of Vet Affairs municipal bond	A	Interest							
133. San Diego CA Public Fac municipal bond	B	Interest							
134. Eaton Vance Limited Duration Income fund	A	Dividend							
135. Powershares Exchange Traded Fund stock	A	Dividend							
136. Donnelly R R & Sons	A	Dividend							

1. Income Gain Codes: (See Columns H1 and I24)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$200,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and I33)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
Page 13 of 14

Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 14 of 14

Name of Person Reporting	Date of Report
O'Connell, Beverly R.	11/14/2012

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Beverly R. O'Connell**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		28	574	Notes payable to banks-secured (auto)		37	916
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		941	757	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		441	240
Real estate owned - see schedule		655	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	300				
Cash value-life insurance							
Other assets itemize:							
Municipal bonds		241	950				
County of LA Deferred Compensation Plan		203	954				
City of LA Pension Saving Plan		410	317	Total liabilities		479	156
				Net Worth	2	052	696
Total Assets	2	531	852	Total liabilities and net worth	2	531	852
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							



## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

<u>Listed Securities</u>	
Apple stock	\$ 83,344
American Intel. Group stock	184
Atlas Pipeline Partners stock	17,680
BGC Partners stock	33,696
Bank of America Corp. stock	17,708
Calamos Strategic Total Return Fund	10,250
CSX Corp. stock	6,141
Chesapeake Granite Water stock	60,631
Citigroup Inc. stock	14,956
Clean Energy Fuels Corp. stock	33,176
CrossTex Energy stock	41,818
Discovery Laboratories stock	12,049
EMC Corp. stock	14,652
East West Bancorp. stock	10,645
Enerplus Corp. stock	12,864
Ford Motor Corp. stock	31,248
Frontier Communications stock	4,494
General Electric Corp. stock	44,226
Genuine Parts Company stock	6,258
Healthcare Tr. America stock	8,000
Heckman Corp. stock	8,750
Huntsman Corp. stock	15,040
Intel Corp. stock	22,171
Janus Capital Group stock	12,750
Kronos Worldwide stock	25,031
Leapfrog Ent. stock	20,332
Lexington Realty Trust stock	14,235
Masco Corp. stock	20,372
Maxwell Tech, Inc. stock	3,906
Merck & Co., Inc. stock	25,416
Mercury Gen Corp. stock	10,133
Microsoft Corp. stock	26,285
Mylan, Inc. stock	11,403
National Tech. stock	16,300
NGP Capital Resources stock	14,660
Nokia Corp. stock	10,680
NVIDIA Corp. stock	5,988
OCZ Technology Corp. stock	4,050
Qualcomm, Inc. stock	11,722
Quicksilver Corp. stock	6,400
RiteAid Corp. stock	2,320
Sandisk Corp. stock	8,356

Sadrill, Ltd. stock	20,170
Senior Housing Properties stock	10,990
Staples Corp. stock	9,212
Starbucks Corp. stock	73,440
Synovus Financial Corp. stock	4,165
TCP Capital Group stock	15,330
Uranium Energy Corp. stock	16,520
Vanguard PRIMECAP Fund	19,379
Vanguard Windsor II Fund	7,471
Windstream Corp. stock	4,760
Total Listed Securities	\$ 941,757

Real Estate Owned

Personal residence	\$ 530,000
Undeveloped lot	125,000
Total Real Estate Owned	\$ 655,000

Real Estate Mortgages Payable

Personal residence mortgage	\$ 224,516
Home equity line of credit	117,375
Undeveloped lot	99,349
Total Real Estate Mortgages Payable	\$ 441,240

11.15.12  
(DATE)

(NAME)

(NOTARY)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los AngelesOn 11-15-2012

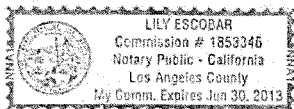
Date

before me, Lily Escobar, Notary Public

Here Insert Name and Title of the Officer

personally appeared Beverly Rose O'Connell

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: [Signature]

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

## Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Individual☐ Individual☐ Partner — ☐ Limited ☐ General☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Attorney in Fact☐ Trustee☐ Trustee☐ Guardian or Conservator☐ Guardian or Conservator☐ Other: \_\_\_\_\_☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**The Superior Court**  
 900 THIRD STREET  
 SAN FERNANDO, CALIFORNIA 91340  
 CHAMBERS OF  
 BEVERLY REID O'CONNELL

TELEPHONE  
 (818) 898-2624

January 3, 2013

The Honorable Patrick Leahy  
 Chairman  
 Committee on the Judiciary  
 United States Senate  
 Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on November 14, 2012 to be a United States District Judge for the Central District of California. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

December 7, 2012: I swore in the new admittees to the State Bar of California who graduated from Pepperdine School of Law, in Malibu, California. In connection with administering the oath, I made brief remarks about being an attorney. Remarks supplied. (Q12.d).

November 21, 2012: I was interviewed by the University of California at Los Angeles (UCLA) after my nomination. I commented on UCLA's recent football victory over the University of Southern California and the honor of being nominated by President Obama. Article supplied. (Q12.e).

On November 19, 2012, I was promoted by the Presiding Judge of Los Angeles Superior Court to be the Supervising Judge of the North Valley District of Los Angeles Superior Court. As the Supervising Judge, I am responsible for supervising approximately 24 bench officers and three courthouses. On January 2, 2013, I was appointed by the Presiding Judge to the Los Angeles Superior Court's Personnel and Budget committee. The Committee advises the court on budget matters. (Q13).

I have completed one additional court trial. (Q13.a).

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Letter to the Honorable Patrick Leahy  
January 3, 2013  
Page 2

I am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested by the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

  
Beverly Reid O'Connell

cc: The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

First let me say Congratulations! And thank you for letting me share this special day with you, I seems just like yesterday that I sat in those seats, listening to Prof. McGoldrick, Prof. Scarberry or Prof. Kerr. Whether you believed it or not, you have made it!

Your presence here today is a milestone event in your lives. In a few short moments you life will change. Every moment after you take this oath, you will have earned the right to be called a lawyer. It is a milestone because it represents the culmination of three long years of study, three even longer days of examination and application. It is a milestone because it is permanent. It does not end when you retire; it does not end,

when you cease to practice law. You will have earned that fundamental difference in responsibility.

You will soon become a special member of our society. You have been given special recognition by our courts, our legislators and our citizens for the protection of others' interest. You are entrusted with keeping privileged communications. Members of our society will tell you important private details trusting that no one else will know of them. No matter what type of law you practice, regular folks from our community will depend upon YOU to protect their financial interests or liberty interests. You will become the most important members of our legal society because YOU will be entrusted with the development of the law. The disputes



YOU choose to bring will contribute to its evolution. People sometimes believe that judges are the most important persons in the courtroom, but I submit to you it will be YOU, the lawyers who are the most important. Judges are passive, we are required to hear the matters YOU bring to us. The development of our law rests with YOU. YOU will decide what types of cases to file and upon what theories you will base those cases.

I submit to you that you are leaving here with all the tools you need to excel in this profession. Especially coming from Pepperdine. You have studied in an atmosphere where integrity matters. Ronald Dworkin said this about the practice of law. "Integrity is the key to understanding legal practice.

Law's empire is defined by attitude, not territory or power or process." You have also studied at an institution where values matter. Your reputation is not worth any case, any motion or any issue. You also studied at an institution where relationships matter. This institution values you as a member of its family and will always be there for you, whether you are seeking an internship, a job or a judgeship.

As you transition from student to professional, those around you will become your legal resources, your trusted advisors and your life-long friends. As your careers evolve, rely upon your fellow alumni, and let your imagination be sole limitation upon your career. In my group of alumni alone, I am honored to call as my friends, the former United States Ambassador to the War

Crimes Tribunal, the United States Attorney for the Central District of California, an award winning personal injury lawyer and a Lt. Colonel in the United States Marines.

This is a special time in your lives, a new beginning and milestone event. In closing please indulge me these few brief pieces of advice:

You are special people for having chosen a career in the law and you are special people for having chosen Pepperdine as your law school. Society places special privileges and responsibilities upon you. Honor those responsibilities. Practice with integrity. Be prepared, be thorough and be

zealous. But remember to give back. Give back to your community by doing pro bono work, give back to your law school in any way you can, and most importantly, give back to your families who made it possible for you be where you are today.



## Obama nominates UCLA alumna to U.S District Court

*Obama recently named UCLA graduate Beverly Reid O'Connell a U.S. District Court judge*

By [RYAN NELSON](#)

Published November 21, 2012, 4:07 am in [News](#)

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Adorned in a black robe, Beverly Reid O'Connell sat in her office in the San Fernando courthouse Monday.

The judge had returned from a weekend that held a significant milestone for her and fellow Bruins: the UCLA football team's victory over USC.

"It was the best," said O'Connell, a UCLA alumna who attended the rivalry football game on Saturday. "We waited a long time for that game."

O'Connell graduated from UCLA in 1986 with a bachelor's degree in political science before moving onto Pepperdine University, where she earned her law degree. On Nov. 14, President Barack Obama nominated her to fill the vacancy in the United States District Court for the Central District of California. If confirmed, O'Connell will be responsible for handling cases that fall under federal jurisdiction within the district, which stretches from the Pacific Coast to the borders of Nevada and Arizona.

She is one of 19 judges nominated by the President and will help fill the nearly 100 vacancies left on federal benches nationwide.

O'Connell has served as a Superior Court Judge in Los Angeles since 2005, after working as an assistant U.S. attorney for 10 years.

For those who know her, her rise in the judicial world seemed inevitable. Linda Reid, O'Connell's older sister who also graduated from UCLA and was her former college roommate, said she noticed O'Connell's affinity for the law from a young age.

"I wanted to be an astronaut. ... (O'Connell) always wanted to be an attorney and a Supreme Court justice," Reid said.

O'Connell would watch hours of legal television shows such as Perry Mason when she was young, Reid said as she recalled their childhood.

"The way I know UCLA football players, she knew Supreme Court justices," Reid said.

O'Connell's time in Westwood was shorter than most students' — she graduated in just three years.

As an undergraduate, she was a member of the sorority Sigma Kappa — which no longer exists at UCLA — where she represented the sorority in the Panhellenic Council.

"She's always had that personality, of just being fair and impartial, and able to mediate," said Jamie Adler Rodriguez, O'Connell's best friend and sorority sister.

Though she graduated more than 25 years ago, O'Connell is still a dedicated Bruin.

She has season tickets to the football games, and plans to attend basketball games at the new Pauley Pavilion when she has time.

During her time at Pepperdine's law school, O'Connell met her husband Dan, now a prosecutor who works in the city of Los Angeles.

Her colleague Charlaime Olmedo, also a UCLA alumna, saw O'Connell's work ethic and knowledge of the nuances of the law as keys to her success. "She is set apart in her capabilities of handling the human drama that comes into the courtroom ... she applies the law fairly, and does it in a way that is gracious to both sides," Olmedo said. "Both sides leave the court with a sense of fundamental fairness, even if they do not necessarily win the argument."

O'Connell's nomination must be confirmed by the U.S. Senate. The nomination isn't secure, however, as Senate Republicans have worked in recent months to block the president's nominations, according to the Los Angeles Times.

While she said she could not comment on the nomination, O'Connell did express her gratitude.

<http://www.dailybruin.com/article/2012/11/obama-nominates-ucla-alumna-to-u-s-district-court>

"I'm honored that the President nominated me."

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AO 10  
Rev. 1/2012

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> O'Connell, Beverly R.	<b>2. Court or Organization</b> United States District Court, Central District of California	<b>3. Date of Report</b> 01/03/2013
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b>  United States District Judge-- nominee	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b>  01/1/2012 to 12/06/2012
<b>7. Chambers or Office Address</b>  Los Angeles Superior Court 900 Third Street San Fernando, California 91340		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2012	Loyola Law School, agreement to serve as Adjunct Professor in 2013
2. 2012	Pepperdine School of Law, agreement to serve as Adjunct Professor 2012
3. _____	_____

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 12

Name of Person Reporting	Date of Report
O'Connell, Beverly R.	01/03/2013

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	Loyola Law School -- teaching	\$6,600.00
2. 2012	Pepperdine School of Law -- teaching	\$3,286.00
3. 2012	Los Angeles Superior Court	\$190,000.00
4. 2011	Loyola Law School -- teaching	\$6,600.00
5. 2011	Pepperdine School of Law -- teaching	\$3,286.00
6. 2011	Los Angeles Superior Court	\$190,000.00
7. 2011	State of California -- Court of Appeal Pro Tem	\$2,151.00

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.*
*(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2012	Los Angeles County District Attorney's Office - salary
2.	
3.	
4.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.*
*(Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.				
2. Exempt				
3.				
4.				



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Name of Person Reporting	Date of Report
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**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting	Date of Report
O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
1. Apple stock	A	Dividend	L	U						
2. Am. Intel group stock	A	Dividend	J	U						
3. Atlas Pipeline Partners stock	A	Dividend	K	U						
4. BGC Partners stock	A	Dividend	K	U						
5. Bank of America stock	A	Dividend	K	U						
6. Calamos Strategic Total Return Fund	A	Dividend	J	U						
7. CSX Corp. stock	A	Dividend	J	U						
8. Chesapeake Graitte Water stock	C	Dividend	L	U						
9. Citigroup Inc. stock	A	Dividend	J	U						
10. Clean Energy Fuels stock		None	K	U						
11. CrossTex Energy stock	B	Dividend	K	U						
12. Discovery Laboratories stock		None	J	U						
13. EMC Corp. stock		None	J	U						
14. East West Bancorp. stock	A	Dividend	J	U						
15. Enerplus Corp. stock	A	Dividend	J	U						
16. Ford Motor corp. stock	A	Dividend	K	U						
17. Frontier Communications stock	A	Dividend	J	U						

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. General Electric Corp. stock	A	Dividend	K	U					
19. Genuine Parts Co. stock	A	Dividend	J	U					
20. Healthcare Tr. America stock		None	K	U					
21. Heckman Corp. stock		None	K	U					
22. Huntsman Corp. stock	A	Dividend	K	U					
23. Intel corp. stock	A	Dividend	K	U					
24. Janus Capital Group stock	A	Dividend	J	U					
25. Kronos Worldwide stock	A	Dividend							
26. Leapfrog Ent. stock		None	K	U					
27. Lexington Realty Trust stock	A	Dividend	J	U					
28. Masco Corp. stock	A	Dividend	K	U					
29. Maxwell Tech. Inc. stock		None	J	U					
30. Merck & Co. stock	A	Dividend	K	U					
31. Mercury Gen. Ins. Co. stock	A	Dividend	J	U					
32. Microsoft Corp. stock	A	Dividend	K	U					
33. Mylan, Inc. stock		None	J	U					
34. National Tech. stock		None	K	U					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. NGP Capital Resources stock	A	Dividend	J	U					
36. Nokia Corp. stock	A	Dividend	J	U					
37. NVIDIA Corp. stock		None	J	U					
38. OCZ Technology stock		None	J	U					
39. Qualcomm Inc. stock	A	Dividend	K	U					
40. Quicksilver Corp. stock		None	J	U					
41. RiteAid Corp. stock		None	J	U					
42. Sandisk Corp. stock		None	J	U					
43. Seadrill Ltd. stock	A	Dividend	K	U					
44. Senior Housing Properties stock	A	Dividend	J	U					
45. Staples Corp. stock	A	Dividend	J	U					
46. Starbucks Corp. stock	A	Dividend	L	U					
47. Synovus Financial Corp. stock	A	Dividend	J	U					
48. TCP Capital Group stock	A	Dividend	K	U					
49. Uranium Energy Corp. stock		None	K	U					
50. Vanguard PRIMECAP fund	A	Dividend	K	U					
51. Vanguard Windsor II Fund	A	Dividend	J	U					

1. Income Gain Codes: A = \$1,000 or less B = \$1,001 - \$2,500 C = \$2,501 - \$5,000 D = \$5,001 - \$15,000 E = \$15,001 - \$50,000  
 (See Columns B1 and D4) F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H1 = \$1,000,001 - \$5,000,000 H2 = More than \$5,000,000
2. Value Codes: J = \$15,000 or less K = \$15,001 - \$50,000 L = \$50,001 - \$100,000 M = \$100,001 - \$250,000  
 (See Columns C1 and D3) N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P1 = \$1,000,001 - \$5,000,000 P2 = \$5,000,001 - \$25,000,000  
 P3 = \$25,000,001 - \$50,000,000 P4 = More than \$50,000,000
3. Value Method Codes: Q = Appraisal R = Cost (Real Estate Only) S = Assessment T = Cash Market  
 (See Column C2) U = Book Value V = Other W = Estimated

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<b>Name of Person Reporting</b>	<b>Date of Report</b>
O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. Windstream Corp. stock	A	Dividend	J	U					
53. Claremont Univ. Graduate bond	B	Interest	K	U					
54. Huntington Mem. Hosp. municipal bond	B	Interest	K	U					
55. Huntington Mem. Hosp. municipal bond	B	Interest	K	U					
56. Cajon Valley Elem. School municipal bond	A	Interest	J	U					
57. California Public Works municipal bond	A	Interest	K	U					
58. Monrovia Library Proj municipal bond	A	Interest	K	U					
59. Orange CountySeries A municipal bond	A	Interest	K	U					
60. Oxnard Gas municipal bond	A	Interest	K	U					
61. Ventura County Unified School dist. municipal bond	A	Interest	K	U					
62. Woodside Elementary School municipal bond	A	Interest	K	U					
63. Chase Bank cash accounts	A	Interest	K	T					
64. Alcoa stock		None							
65. American Eagle Outfitters stock	A	Dividend							
66. Avon Products stock	A	Dividend							
67. CVR Partners stock	B	Dividend							
68. Flaherty & CRMIMNE (PFO) stock	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					(5) Identity of buyer/seller (if private transaction)
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)		
69. GAMCO stock	A	Dividend								
70. GENTEX stock	A	Dividend								
71. Genworth Financial stock		None								
72. KKR Financial Holdings stock	A	Distribution								
73. Kayne Anderson Energy	A	Dividend								
74. Eli Lilly stock	A	Dividend								
75. OPKO stock		None								
76. Oracle stock	A	Dividend								
77. Penn VA resource Partners	A	Dividend								
78. Provident energy stock	A	Dividend								
79. Rentech Nitrogen stock	A	Dividend								
80. Sprint Nextel stock		None								
81. Sandridge Miss. TR I	A	Distribution								
82. Teekay Tankers Inc. stock	A	Dividend								
83. Washington Mutual stock		None								
84. CA St. EDL municipal bond		None								
85. CA st. Series A municipal bond		None								

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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O'Connell, Beverly R.	01/03/2013

**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. San Diego CA municipal bond		None							
87. Bristol Myers Squibb stock		None							
88. Newell Rubbermaid stock		None							
89. Easton Vance Limited stock		None							
90. Hugoton Royalty TR Tx (HGT) stock	A	Dividend							
91. Napco Security stock		None							
92. PWRSH Financial (PGF) stock		None							
93. Wendy's stock	A	Dividend							
94. CA Dept. of Vet Affairs municipal bond	A	Interest							
95. San Diego CA Public Fac municipal bond	B	Interest							
96. Eaton Vance Limited Duration Income fund	A	Dividend							
97. Powershares Exchange Traded Fund stock	A	Dividend							
98. Donnelly R R & Sons	A	Dividend							

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$5,000,001 - \$15,000,000	E = \$15,001 - \$50,000 J = \$50,001 - \$100,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Ascertainment W = Estimated	T = Cash Market	



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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of report.)*

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**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Beverly R. O'Connell**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		33	788	Notes payable to banks-secured (auto)		34	856
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		962	193	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		445	372
Real estate owned – see schedule		655	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	300				
Cash value-life insurance							
Other assets itemize:							
Municipal bonds		254	372				
County of LA Deferred Compensation Plan		186	834				
City of LA Pension Saving Plan		426	155	Total liabilities		480	228
				Net Worth	2	088	414
Total Assets	2	568	642	Total liabilities and net worth	2	568	642
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

Apple stock	\$ 81,939
American Intel. Group stock	180
Atlas Pipeline Partners stock	16,495
BGC Partners stock	25,920
Bank of America Corp. stock	18,734
Calamos Strategic Total Return Fund	9,900
CSX Corp. stock	5,928
Chesapeake Granite Water stock	55,514
Citigroup Inc. stock	13,828
Clean Energy Fuels Corp. stock	38,454
CrossTex Energy stock	40,716
Discovery Laboratories stock	10,750
EMC Corp. stock	14,892
East West Bancorp. stock	10,575
Enerplus Corp. stock	10,624
Ford Motor Corp. stock	32,060
Frontier Communications stock	4,570
General Electric Corp. stock	44,346
Genuine Parts Company stock	6,509
Healthcare Tr. America stock	18,212
Heckman Corp. stock	14,550
Huntsman Corp. stock	16,440
Intel Corp. stock	20,054
Janus Capital Group stock	12,300
Lcapfrog Ent. stock	25,508
Lexington Realty Trust stock	24,203
Masco Corp. stock	22,896
Maxwell Tech, Inc. stock	4,350
Merck & Co., Inc. stock	24,675
Mercury Gen Corp. stock	10,405
Microsoft Corp. stock	24,512
Mylan Inc. stock	12,231
National Tech. stock	15,560
NGP Capital Resources stock	14,400
Nokia Corp. stock	22,985
NVIDIA Corp. stock	5,985
OCZ Technology Corp. stock	5,010
Qualcomm, Inc. stock	19,086
Quicksilver Corp. stock	8,000
RiteAid Corp. stock	2,020
Sandisk Corp. stock	7,820
Seadrill, Ltd. stock	19,265

Staples Corp. stock	11,175
Senior Housing Properties stock	9,360
Starbucks Corp. stock	82,992
Synovus Financial Corp. stock	4,029
TCP Capital Group stock	15,010
Uranium Energy Corp. stock	15,820
Vanguard PRIMECAP Fund	19,763
Vanguard Windsor II Fund	7,453
Windstream Corp. stock	4,190
Total Listed Securities	<u>\$ 962,192</u>

<u>Real Estate Owned</u>	
Personal residence	\$ 530,000
Undeveloped lot	<u>125,000</u>
Total Real Estate Owned	<u>\$ 655,000</u>

<u>Real Estate Mortgages Payable</u>	
Personal residence mortgage	\$ 346,500
Undeveloped lot	<u>98,872</u>
Total Real Estate Mortgages Payable	<u>\$ 445,372</u>

Senator WHITEHOUSE. Thank you very much, Judge O'Connell.

As the Chairman of this particular hearing, I am going to be here through the bitter end of it, so I am going to yield my time right now to the Honorable Ranking Member, Senator Grassley, and then recognize Senator Blumenthal, then recognize Senator Lee, and reserve my questioning until the end. So without further ado, Ranking Member Grassley.

Senator GRASSLEY. And that is quite a courtesy for us minority people here.

Senator WHITEHOUSE. Not to have to listen to me.

[Laughter.]

Senator GRASSLEY. Thank you very much, and I appreciate everything I have learned about you, although it has just been lately that I have learned it, but as other people have said, qualified to do this.

I am going to start with you, Ms. Dick, a couple questions. I understand that last year there was a significant class action settlement in favor of Louisiana health care providers in relationship to the Louisiana PPO Act. As a member of the Louisiana Workforce Commission, you heard cases involving disputed claims by health care providers, so I would like to have you explain your work there as it relates to the class action settlement. And, specifically, were any of your decisions overturned by that settlement?

Ms. DICK. Thank you, Ranking Member Grassley, for the question. Yes, I was hired by the Louisiana Workforce Commission, which is the agency that would be akin to a Department of Labor. We just happen to call it the "Workforce Commission." They have jurisdiction over both workers' compensation and unemployment compensation. And there were approximately 4,000 to 5,000 lawsuits filed in the Office of Workers' Compensation that challenged whether or not physicians who treated injured workers could be compensated with PPO discounts if they had signed a PPO provider agreement.

As you might imagine, that volume of litigation literally flooded those administrative courts, and so the Louisiana Workforce Commission determined that they needed some help. And so I was engaged, really, to preside specifically over those cases.

There ultimately was a class settlement. I did not participate in that class settlement in any way. I simply presided over the cases that were assigned to my docket, set them for trial, set them for hearings, moved them along. Ultimately, I concluded that the physicians, if they had entered into a contract, that they could be compensated under the terms of that contract, and that decision in a different case was affirmed by the Louisiana Supreme Court.

Senator GRASSLEY. Okay. A second question for you. There are a number of different theories explaining how judges should interpret the Constitution. We often hear nominees recite the mantra that they will apply the law to the facts, and I do not argue with that, but I am looking for an answer with a little bit more thought behind it. What constitutional interpretation models will guide you when you are faced with constitutional questions?

Ms. DICK. Senator, it is my very firm belief that it will be my job as a district court judge, which is, you know, kind of the grass-roots foot soldier, and I am very cognizant of the fact that that will

be my role, a foot soldier, and I will follow the precedent which is enunciated by the United States Fifth Circuit Court of Appeal and foremost by the U.S. Supreme Court. Whether like it or not, that is of no moment. It is how does the U.S. Supreme Court interpret whatever congressional statute is at issue or the provisions of the Constitution, and that is what I would follow.

Senator GRASSLEY. Mr. Gordon, I bet you are just going to love to be asked a question about something you wrote 30 years ago, but we do not do it because of—we kind of want to know what the situation is today. This dealt with the decriminalization of prostitution. At one point in the article, you discuss the 1908 Supreme Court case, *Bitty*. In that case, the Court upheld federal statute noting prostitution was hostile to “the idea of the family.” You criticized the Court for their view, stating that criminalization of prostitution “is an ineffective way to preserve marriage and the family.”

I recognize that this paper was written 30 years ago and you were in college at the time, so the first question is: Have your views of this topic changed since you wrote that article so many years ago?

Mr. GORDON. Yes, Senator, they have changed somewhat. Like you pointed out, that was an article that was a condensed version of my honors senior thesis out of Claremont McKenna College that was more of a policy analysis of prostitution, comparing the Nevada model to the German model, and looking at various issues related to the policies behind criminalization of prostitution.

That policy analysis really is the area for Congress and the State legislatures to make decisions. It is not for judges to make policy decisions like that. That is the legislative body. I recognize that judges have a separate function. The Founders set up three branches of our government, and the judicial power is very limited. And it is up to the elected officials like Senators, Congress folks, and State legislators to pass those kinds of policy decisions.

Senator GRASSLEY. Prostitution is largely, if it is a criminal activity, left to individual States. There is a federal interest. Congress has lawfully established anti-prostitution laws based on powers delegated in the Constitution: immigration, regulating interstate commerce, and establishing foreign trade. The statute at issue in *Bitty* is one example, so a broad question: When reviewing a federal statute, is it ever permissible for a court to refer to State laws in order to assist in its ruling? If so, when and under what circumstances?

Mr. GORDON. Senator, if the answer is obvious from the plain language of the statute, that ends the inquiry. If it is not, then I believe judges look to the precedent from the U.S. Supreme Court or the courts of appeals from that jurisdiction, and that should end the inquiry as well.

Senator GRASSLEY. Okay. For all of you, I will have some written questions as well.

I want to go to Ms. Jackson. I thought after Ryan got done speaking about you we could just vote you out right away.

Ms. JACKSON. That would be my hope, Senator.

[Laughter.]

Senator GRASSLEY. Anyway, and that does not denigrate what your Congresswoman said about you, but I want to ask you about

some terrorism cases. In looking at the arguments you have made in court representing terrorists and the notes you provided the Committee last week from a December 2007 presentation, I have questions about your views on the rights of detainees, and that in turn causes some concern about how you will handle terrorism cases that may come before you if you are confirmed.

Do you believe that terrorists pose a danger to America?

Ms. JACKSON. Yes, Senator, I do.

Senator GRASSLEY. Okay. Do you believe that the United States is at war against terrorists?

Ms. JACKSON. Yes, Senator, I do.

Senator GRASSLEY. What is your understanding of the current state of law regarding those detainees as a result of the United States Global War on Terrorism? How will you approach these issues, if confirmed?

Ms. JACKSON. Senator, I have not looked at the issue in terms of the current state of the law in many years. The time that I worked on the terrorism cases that you referred to, I was an assistant federal public defender. That was several years ago. And then I worked on a few amicus briefs when I was at Morrison & Foerster. In all of those situations, the views that were expressed were the views of my clients that I represented them in that capacity and the briefs did not necessarily represent my personal views with regard to the war on terror or anything else.

Senator GRASSLEY. Okay. I will accept your answer for now. I might, on reflection, follow up, maybe, to ask you to look at it a little more definitively and give me a written answer.

Ms. JACKSON. Yes, sir.

Senator GRASSLEY. But do not do that until I submit it to you, because I want to think about that.

Since you are on the Sentencing Commission, I am going to ask you three questions.

Ms. JACKSON. Okay.

Senator GRASSLEY. But just one on sentencing, and then I have got two that I will submit in writing.

It is my understanding that sentences handed down by the D.C. district judges frequently are departures from the Sentencing Guidelines. Have you studied this since being appointed to the Commission? And do you have any observations to share with us on that topic?

Ms. JACKSON. Well, the Commission is working on a report right now that gathers data and information not only about the D.C. District Court but also courts nationwide with respect to their sentencing practices. We are in the process of analyzing the information and issuing this report, which we hope will be out early next year.

I can say that, as the Chairman of the Commission testified to the House Judiciary Committee, the Commission is concerned about trends that we are seeing in the data with regard to increasing disparity in sentencing and that a number of courts have been in the position of having judges sentence outside the guidelines with respect to certain offenses, and we are analyzing that, and we hope to have a report shortly.



Senator GRASSLEY. Ms. O'Connell, as a State judge in California, have you ever imposed a death sentence?

Judge O'CONNELL. No, I have not, Senator. In order to have a death case, I am under the California Rules of Court trained and eligible to handle such a case. The district attorney must seek the death penalty. The jury must return such a verdict before it would be appropriate for me to hand down a sentence like that, and no such case has yet come before me.

Senator GRASSLEY. If confirmed, would you be able to impose the death penalty where it was appropriate as a federal judge?

Judge O'CONNELL. Yes, Senator, I would.

Senator GRASSLEY. Okay. You co-authored a chapter on electronic evidence decisionmaking. In it, you wrote, "An effective advocate is one who develops empathetic ties to decisionmakers, be they judge or jury, and exploits them to their clients' advantage."

What role does empathy have in the role that a judge plays?

Judge O'CONNELL. Certainly, Senator, and to the extent empathy is defined as "respect for the litigants," in my courtroom, all litigants who appear in front of me are treated with respect. To the extent empathy means "feeling sorry for someone" or "being guided by passion or prejudice," that has no place in judicial decision-making and has, over my seven years on the bench, played no role in my decisions from the bench.

Senator GRASSLEY. I am going to read one question, but I think you just answered it, so you do not have to say any more. But I was going to follow up. Do you believe that the sentence a defendant receives for a particular crime should depend on the judge he or she happens to draw? Maybe I will ask you to speak to that.

Judge O'CONNELL. Okay. No.

Senator GRASSLEY. Okay.

[Laughter.]

Senator WHITEHOUSE. Short and sweet.

Senator GRASSLEY. Thanks to all of you.

Judge O'CONNELL. Thank you.

Senator WHITEHOUSE. Thank you very much, Senator Grassley. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Let me begin by asking a question of Ms. Dick and Mr. Gordon. I note from my review of your records that your respective practices have been primarily in the civil area, and I wonder whether you feel qualified to do the kind of criminal work that a federal district judge inevitably has to do. Ms. Dick, maybe you can begin by answering.

Ms. DICK. Yes, thank you, Senator Blumenthal. I do not feel qualified right now, but I will be qualified, and the way that I will come about that knowledge will be work ethic, work ethic, work ethic.

Senator BLUMENTHAL. Thank you.

Mr. Gordon.

Mr. GORDON. Senator, I agree with Ms. Dick's comment. I recognize the need to roll up my sleeves and dig in and work, to study the applicable Rules of Criminal Procedure, case law, and Supreme Court precedent and will do so.

Senator BLUMENTHAL. Thank you.

Commissioner Jackson, I want to ask you a couple of questions about the Sentencing Commission.

Ms. JACKSON. Yes.

Senator BLUMENTHAL. And, in particular, give you an opportunity to answer—it may not have been your decision, but the decision to apply retroactively some of the guidelines that the Sentencing Commission promulgated. Would you care to comment?

Ms. JACKSON. Yes, Senator. It was in part my decision because the Commission unanimously determined that the standards that apply when the Commission decides retroactivity applied in the crack cocaine context. And I would say that the Sentencing Reform Act, which is the Commission's organic statute, as the Commission read it and as it states, requires that the Commission undertake retroactivity determinations whenever penalties are reduced, and the Commission reduced the crack cocaine penalties pursuant to Congress' direction when Congress enacted the Fair Sentencing Act. And so then we undertook the retroactivity analysis, and the bipartisan commission unanimously determined that the factors that apply, apply to the crack cocaine context, a decision that the Justice Department also agreed with, and so did nearly every party that appeared before us at the hearing.

Senator BLUMENTHAL. And I think there is, for my own part, substantial persuasive basis for that decision, and I just wanted to give you an opportunity to address any concerns that may be raised.

Let me ask you, do you have a view as a prospective member of the bench as to when departures from the Sentencing Guidelines are justified, what reasons there ought to be for departing from the guidelines?

Ms. JACKSON. Well, Senator, the guidelines themselves have various departure criteria. The guidelines state that when there is a situation in which a factor is not taken into account by the guidelines or the degree to which the factor exists is unusual and takes the case out of the heartland of cases, that would be an appropriate circumstance to depart.

The Supreme Court in *Booker* also held that the guidelines themselves are no longer mandatory, that a court also needs to take into account, in addition to the guidelines, the factors that are listed under 3553(a), things like the nature and circumstances of the offense and the characteristics of the offender, and all of those factors are things that courts need to look at in determining whether or not to apply a guideline sentence.

So in my role as a district judge, if confirmed, I would follow the Supreme Court's precedents and give significant weight to the guidelines in that analysis.

Senator BLUMENTHAL. Maybe I should have phrased it differently. Do you think there are some reasons that are more persuasive than others for departing from the guidelines, such as, for example, individual circumstances versus the policy of the sentencing statutes and so forth?

Ms. JACKSON. Senator, I do not have a particular view on that. I think it would depend on the case, that the judge would need to look at the circumstances that exist in the case in deciding what

factors to either stay within the guidelines as a result of or depart from the guidelines as a result of.

Senator BLUMENTHAL. Judge O'Connell, do you have any views on the Sentencing Guidelines? I know you have not dealt with them directly as a State court judge, and I must confess I do not think California has sentencing guidelines, but—

Judge O'CONNELL. We do not, but you should know that with me is the author of the California sentencing, federal—excuse me, felony sentencing, so I have the expert in California law right behind me. But we do not have the guidelines in California. But as an Assistant United States Attorney, before the guidelines became advisory, they were mandatory. So I am certainly familiar with their application, and I believe that they provide a wonderful starting point to ensure uniformity of sentences.

Senator BLUMENTHAL. I know that as an Assistant United States Attorney, you not only tried cases but also served in a supervisory role in, I think it was, the General Crimes Section. And I wonder whether you found yourself sometimes differing with what the guidelines provided.

Judge O'CONNELL. I have not been involved—that was quite some time ago, and I do not have any specific recollections. But the guidelines were mandatory, so we followed the guidelines.

Senator BLUMENTHAL. Thank you.

Thank you, Mr. Chairman, and I thank each of you again for your willingness to serve in this very, very important capacity. Thank you.

Senator WHITEHOUSE. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for coming and for your family members and friends who have joined us.

I wanted to start with Judge O'Connell. You have written that “an effective advocate is one who develops empathetic ties to decisionmakers, be they judge or jury, and exploits them to their clients' advantage.” Let us talk about that statement for a minute. I do not doubt you have got to persuade as an advocate, but how should judges respond when they feel an empathetic pull on the part of one of the parties or one of the advocates?

Judge O'CONNELL. Empathy as far as feeling sorry or closeness for a party should not govern judicial decisionmaking. The sentence of a criminal defendant should not differ based upon the judge. I can respect that as effective advocacy. The fact that I recognize that is important because then I can disregard it.

Senator LEE. Good. So you think having written that and identified the fact, you would be able to identify it more quickly and say that is an empathetic factor, let us move on to the law?

Judge O'CONNELL. Absolutely, Senator. For example, apparently I have become much funnier after having been a judge than I ever was as an advocate, so I understand the pulls that, as a judge, advocates attempt to persuade me.

Senator LEE. And do they laugh more at your jokes while you are wearing the robe and in the courtroom?

[Laughter.]

Judge O'CONNELL. Probably.

Senator LEE. There was something else that you wrote that caught my attention because I come from a State with a lot of snow. You said that each judge's approach to electronic discovery and to the admission of certain types of evidence can differ as much as a snowflake might differ. Tell us what you mean by that.

Judge O'CONNELL. The admission of electronic evidence is an evolving area in California, and it depends on the purpose for admitting the evidence, whether it is for the truth of the matter asserted or whether it is for a different purpose, demonstrative evidence. The purpose of that comment was to say that the type of evidence and the uniqueness of the type of evidence must be analyzed.

Electronic evidence is also very dangerous because it is subject to manipulation, and judges need to be aware of how the technology works in order to adequately assess foundation and admissibility.

Senator LEE. In California, have you been able to—has a body of case law evolved to the point where parties know what to expect going into it?

Judge O'CONNELL. It has not yet evolved. In fact, in several areas, there are cases currently pending before the California Supreme Court which will give us guidance at the trial court level as to the admissibility of, for example, red light camera photographs, Facebook/MySpace pages, those types of things.

Senator LEE. Right. And as a federal judge, I guess you will have a different set of standards to abide by, but you will know what to ask.

Judge O'CONNELL. I will know the questions to ask, yes, Senator.

Senator LEE. Thank you.

And, Commissioner Jackson, I wanted to turn to you. First of all, I developed great empathy for you when I read that you were an attorney at the Sentencing Commission at the time *Booker* came down.

Ms. JACKSON. Yes, I was.

Senator WHITEHOUSE. How did that empathy work out for you? [Laughter.]

Senator LEE. See, I am allowed to have empathy because I am a politician.

I was an Assistant U.S. Attorney at the time that came down. I was on a flight on my way to a wedding, and I read the clip about it, and all of a sudden I thought my world was about to change, and it did.

Ms. JACKSON. And it did.

Senator LEE. Tell us how you went about digesting that and writing up guidance materials for the Commission.

Ms. JACKSON. Well, as you know, the Commission had a little bit of foreshadowing that something might happen in *Booker* because the previous year the Supreme Court handed down the *Blakely* decision.

Senator LEE. Right. I am sorry, yes, *Blakely*.

Ms. JACKSON. *Blakely*.

Senator LEE. Yes, *Blakely* was the one that I read on the way to the wedding.

Ms. JACKSON. Yes. So I was at the Commission as a staff member between *Blakely* and *Booker*, and it was a very interesting time.

Senator LEE. And we were not yet sure whether and to what extent it was going to apply to the federal——

Ms. JACKSON. That is correct. And I was in the Drafting Division of the Sentencing Commission, and a lot of thought went into what might happen and what sorts of things the Commission could do in order to respond to a Supreme Court decision. So it was quite an interesting time for me.

Senator LEE. I suppose that there is not a direct analog to being a district judge and that that was our Nation's highest court, but it certainly is indicative of the ripple effect that a single court decision can have on the entire profession when it issues a ruling like that. But that is the case. There is not much we can do about that.

I also wanted to ask you, do you intend to follow Justice Breyer's very awesome style of questioning an oral argument in your court? [Laughter.]

Ms. JACKSON. I do not think anybody could match Justice Breyer in his questioning, and I do not know that I would even attempt to try.

Senator LEE. Thank you. I see my time has expired.

Thank you, Chairman.

Senator WHITEHOUSE. Thank you very much, Senator Lee.

First of all, let me thank each of you for the decision that you have made to take this step into this particular kind of public service. I am sure that for many of you there would be more remunerative paths you could take, and there are also times when the role that you will be assuming, if confirmed, is a very lonely one. And my question for each of you is: In the event that the law requires—your reading of the facts and the law in the case before you requires that you make a decision that will be unpopular in your community, are you willing to take that step to cross public opinion and do what you believe is right? As you know, federal judges have a long and proud history of doing exactly that, particularly in the South through the civil rights era, but it is a very difficult position to be in to take a position that those around you disagree with. Ms. Dick.

Ms. DICK. Without question, Senator Whitehouse, I would be willing to cross public opinion in order to follow the rule of law.

Senator WHITEHOUSE. Mr. Gordon.

Mr. GORDON. I agree, Senator. Without the courage to make such decisions, the very foundations of our government fall apart, and judges have to have the courage to make unpopular decisions at times.

Senator WHITEHOUSE. Well said.

Commissioner Jackson.

Ms. JACKSON. Yes, Senator, I certainly would. I would see that as my duty and obligation as a federal judge.

Senator WHITEHOUSE. Judge O'Connell.

Judge O'CONNELL. Thank you, Senator. I believe it has been my practice and will continue to be my practice to follow the law, regardless of public opinion.

Senator WHITEHOUSE. Good. Well, my final questions are going to be for Commissioner Jackson. We are going to have a Rhode Island moment now, Commissioner Jackson.

Ms. JACKSON. Oh, goodness.

[Laughter.]

Senator WHITEHOUSE. And let me remind you you are under oath as you answer these important questions.

Bruce Selya is a Rhode Islander. He is a person I am very proud of and admiring of. I am also impressed with his vocabulary. And I have always wondered, now that I have got a clerk of his before me, where do those words come from? Does he give you a thesaurus to find good ones? Does he simply have an amazing vocabulary in his mind? Can we confirm this important issue right now in this hearing?

Ms. JACKSON. Yes, sir, and the latter is the case. It is quite amazing to work for him because one of the things you learn early on is that you as a clerk are not supposed to be the one to provide the words. That is his job, and so you write the opinion or draft the opinion, and it comes back with these wonderful words in them that come from his head. So he is truly amazing, as you said.

Senator WHITEHOUSE. Well, Judge Selya is a very distinguished Rhode Island jurist. He was legal counsel to Senator John Chafee before he was Senator, when he was Governor of Rhode Island. Senator Chafee served with great distinction here in this body. Judge Selya went on to the First Circuit, and I think he recently passed a milestone of having written now more majority and court opinions than any judge in the history of the First Circuit, if I am not mistaken.

Ms. JACKSON. I was not aware of that, but I would not be surprised.

Senator WHITEHOUSE. Yes, very, very impressive.

Well, equally, each of you is very, very impressive, and we look forward to pushing for a prompt confirmation, and if this should wash into the following year, we hope very much that our colleagues will allow this hearing to stand so we do not have to replicate it and that we can quickly move you back into the queue and toward nomination. And with any luck, we will be able to slow down the logjam that occurs on the executive calendar on the Senate floor. Or, I guess, speed things up through the logjam would be the better way to say that.

So, once again, congratulations on the great honor of having been nominated by the President. Congratulations on the personal decision you made to go forward, and best wishes in the confirmation process and in your careers ahead.

The hearing record will remain open for another week for any further questions that the minority or the majority may have and for any materials that anybody may wish to add to the record. But subject to that, the hearing is adjourned.

[Whereupon, at 11:11 a.m., the Committee was adjourned.]

**Statement of Senator Chuck Grassley  
Before the Committee on the Judiciary  
On the Nominations of:**

*Shelly Deckert Dick, to be United States District Judge for the Middle District of Louisiana*

*Andrew Patrick Gordon, to be United States District Judge for the District of Nevada*

*Ketanji Brown Jackson, to be United States District Judge for the District of Columbia*

*Beverly Reid O'Connell, to be United States District Judge for the Central District of California*

**December 12, 2012**

I join you in welcoming the nominees, their families, friends, and other guests. We have four District Court nominees before us today.

With today's hearing, during this Congress we have held 29 nomination hearings for 116 judicial nominees. In total, the Senate has confirmed 164 District and Circuit nominees. The Committee has made good and steady progress in confirming judicial nominees. This year alone, we have confirmed 42 District and Circuit judges, which is significantly higher than were confirmed in the last Presidential election year. During this Congress, the 112<sup>th</sup>, we have confirmed 104 judges. That matches the highest

number of confirmations done by this Committee during a Congress when President Bush was in office. That took place in the 108<sup>th</sup> Congress, when Republicans were in the majority. So I think by any objective measure, one would have to conclude that we are treating this President and his nominees quite fairly.

Again, I welcome the nominees and I look forward to this hearing. I will place the balance of my statement in the record regarding the biographical information on each nominee.

Ms. Dick received her B.A. from the University of Texas, Austin in 1981 and her J.D. from Louisiana State University in 1988.

From 1988 to 1994, Ms. Dick worked for Gary Field Landry and Dornier as an associate attorney. In 1994, she founded the Law Offices of Shelly D. Dick, LLC (formerly Forrester & Dick), where she is still working as a partner.



Her practice has emphasized commercial litigation, casualty defense litigation, and employment law litigation. She has handled 10 jury trials, and 20 bench trials in which she served as chief or co-counsel. In 2008, the Louisiana Workforce Commission appointed Ms. Dick to serve as an ad hoc Administrative Hearing Officer. She estimates that she has presided over 10 to 12 administrative hearings that have gone to verdict or final judgment.

The American Bar Association Standing Committee on the Federal Judiciary has rated Ms. Dick as Substantial majority "Qualified"; Minority "Well Qualified".

Mr. Gordon received a B.A. from Claremont McKenna College in 1984, graduating cum laude. In 1987, he graduated from Harvard Law School. Upon graduation, he joined Streich, Lang, Weeks, and Cardon in Phoenix, Ariz. In 1992, he moved to Las Vegas, Nevada where he assisted Streich Lang expand into the Las Vegas market through an affiliate of the firm, Dawson and Associates. In 1994, he

lateraled to McDonald Carano Wilson LLP, working as an associate until 1997, when he became a partner. He remains with McDonald Carano Wilson to this day.

The American Bar Association Standing Committee on the Federal Judiciary has rated Mr. Gordon as Substantial majority “Well Qualified”; Minority “Qualified”.

Ms. Jackson received her B.A. magna cum laude from Harvard University in 1992 and her J.D. summa cum laude from Harvard Law School in 1996.

Upon graduation, Ms. Jackson clerked for Judge Patti B. Saris of the United States District Court for the District of Massachusetts. The following year, she served as a law clerk for Judge Bruce M. Selya of the United States Court of Appeals for the First Circuit. Upon completion of her clerkship, she became an associate at Miller, Cassidy Larroca & Lewin, LLP, where she worked primarily on matters involving civil rights and breach of contract issues. In 1999,

she left the firm and became law clerk to Associate Justice Stephen G. Breyer of the Supreme Court of the United States.

From 2000 to 2002, Ms. Jackson worked at the Washington, D.C. office of Goodwin Proctor as a general litigation associate. In 2002, Ms. Jackson joined The Feinberg Group (currently Feinberg Rozen, LLP) as an associate, where she assisted in the negotiated resolution of mass tort claims. In 2003, Ms. Jackson became an Assistant Special Counsel to the United States Sentencing Commission. In 2005, Ms. Jackson joined the Federal Public Defender's Office as an Assistant Federal Public Defender. Her practice there consisted primarily of appellate work.

On February 12, 2010, following Senate confirmation, President Obama appointed Ms. Jackson to be a Commissioner and Vice-Chair of the United States Sentencing Commission.

The American Bar Association Standing Committee on the Federal Judiciary has rated Ms. Jackson as Unanimous “Qualified”.

Judge O’Connell received her B.A. from University of California, Los Angeles in 1986 and her J.D. from the Pepperdine University School of Law in 1990. Upon graduation, she worked as a litigation associate at Morrison & Foerster. She had a general practice there, handling business, employment, intellectual property, and bankruptcy matters. In 1995, she joined the United States Attorney’s Office, first in the General Crimes Section, then in the Major Narcotics Section and the Violent and Organized Crime Section.

In 2005, Judge O’Connell was appointed by then Governor Schwarzenegger to the Los Angeles Superior Court. There, she presided primarily over criminal cases filed by both the Los Angeles City Attorney and Los Angeles District Attorney’s Office. She was reelected to this position

in 2007. In 2012, she sat as a temporary justice in District Two, Division. There she reviewed briefs, write and drafted opinions in all areas of law, and participated in oral arguments.

The American Bar Association Standing Committee on the Federal Judiciary has rated Judge O'Connell as Unanimous "Well Qualified".

**Statement of U.S. Senator Dianne Feinstein  
on the Nomination of Beverly Reid O'Connell to be a U.S. District Judge for  
the Central District of California**

**December 12, 2012**

Mr. Chairman, I regret very much that I am unable to attend today's hearing. I would like, however, to express my strong support for Superior Court Judge Beverly Reid O'Connell's nomination to the Central District of California.

She is a well-respected jurist on the Los Angeles County Superior Court, and I have no doubt she will serve with great distinction as a District Judge on the U.S. District Court for the Central District of California.

Judge O'Connell was born in Ventura, California. She earned her Bachelor's Degree from the University of California, Los Angeles in 1986, and her law degree from Pepperdine University *magna cum laude* in 1990. She was Managing Editor of the *Pepperdine Law Review*.

Following law school, Judge O'Connell worked on complex civil litigation at the law firm Morrison and Foerster in Los Angeles from 1990 through 1995.

She then joined the U.S. Attorney's Office in the Central District of California, where she prosecuted a number of high-profile cases. For example, she prosecuted a high-ranking member of the Arellano Felix drug cartel, as well as a man who threw Molotov cocktails at sport-utility vehicles at a car dealership.

In her ten years in the U.S. Attorney's Office, she built a reputation as a distinguished prosecutor and won a number of awards, including the Drug Enforcement Administration Administrator's Award for Exceptional Service Rendered to the Federal Government and a Special Achievement Award from the Department of Justice.

In 2005, she was appointed to the Superior Court by Governor Arnold Schwarzenegger. She has been an outstanding trial judge on the Superior Court, presiding over literally thousands of cases and approximately 150 jury trials. She also has been a proven administrator, serving with great skill as an Assistant Supervising Judge for the North Valley District of the Superior Court.

Apart from her career in practice and on the bench, Judge O'Connell also has been an active teacher of the law. In particular, she has taught Trial Advocacy at Pepperdine, her *alma mater*, as well as at Loyola Law School in Los Angeles.

I have no doubt Judge O'Connell, who has been rated "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, will prove to be an excellent addition to the Central District's bench.

I commend Senator Boxer for recommending Judge O'Connell, who impressed me very much when I met with her. I thank the President for nominating her as well.

I hope my colleagues on this Committee will support her nomination, and that she can be confirmed as soon as possible.

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Thank you very much, Mr. Chairman.

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**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On Judicial Nominations  
December 12, 2012**

Today we welcome four of President Obama's district court nominees to the Committee. I thank Senator Whitehouse for chairing this important hearing and I thank our ranking Republican member, Senator Grassley, for continuing to work with me to schedule these hearings.

This is the eleventh hearing the Committee has held this year for judicial nominations. I have not jammed the minority with judicial confirmation hearings the way my Republican predecessor did when he was chairman in 2003. That year the Republicans proceeded with 29 hearings for 85 nominees in just one congressional session. Instead, I have taken the steady and measured course and protected minority rights. Rather than seek to jam 29 hearings into one year, we have taken two years to reach that total this Congress.

Despite my solicitousness, our Republican members would not agree to move forward with the nomination of Srikanth Srinivasan to the D.C. Circuit. His nomination was received last June and I would have liked to have proceeded with his hearing without further delay. Since there will soon be four vacancies on this important court, it makes no sense to me for us to wait—especially in light of the Republican filibuster of the President's earlier nominee to this Circuit. I appreciate that the Republicans members have agreed that they will be ready to proceed on that nomination at our first confirmation hearing next month, in January of the new Congress.

Regrettably, Senate Republicans continue their practice of requiring the Senate to extend consideration of nominees over two years. This year, again, the Senate had to consider 19 judicial nominees who could and should have been confirmed last year. It appears Senate Republicans are continuing that unfortunate slowdown and are refusing to proceed on nearly a dozen judicial nominees ready for final Senate action this year after full consideration by the Judiciary Committee. These delays mean that the Senate will, again, be needlessly forced to devote the first several months of next year confirming judges who could and should have been confirmed the previous year.

We will not begin to approach the 205 confirmations we achieved during President Bush's first term by the end of this President's first term nor will we reduce vacancies significantly. In fact, in light of such obstruction, President Obama may be the first President to end his first term with higher judicial vacancies—due solely to obstruction—than when he became President. This is bad for our Federal courts and for the American people who depend on them for justice.

I look forward to hearing from our four nominees today along with a number of their home state Senators. All of the nominees for whom we have held hearings during these four years have had the support of both their home state Senators. President Obama has done a good job of reaching out to home state Senators from both parties and working with them. Both those facts distinguish our process from that of President Bush and the Republicans when they were the majority in the Senate.

I know that home state Senators would like to see the nominees appearing today confirmed before the end of this year. I am prepared to expedite the Committee process. That is what we have done in the past as the end of the Congress loomed. With Republican cooperation these nominees could be reported to the Senate by the Committee, confirmed by the Senate and could be getting to work for the people of Louisiana, Nevada, California, and D.C. before the new year.

When George W. Bush was President, Democrats cooperated in moving judicial nominees quickly through the Committee and to a confirmation vote at the end of the year. I did so whether I was Chairman or the ranking member. We have demonstrated in the past that we can do this. There is no need for the months and months of stalling that now delay every judicial nominee after being reviewed and voted on by this Committee. Senate Republicans have become increasingly insistent on needless delays. President Obama's district court nominees have been stalled an average of 101 days on the Senate floor before a final vote. Just last week the Senate confirmed Judge Michael Shea to a vacancy on the District Court for the District of Connecticut. His nomination had been needlessly delayed for 223 days.

At the end of President Bush's administration, I worked to bring five of his nominees up for a confirmation votes by the Senate just three days after their hearing. Overall, more than two dozen of President Bush's nominees -- including three circuit nominees -- were confirmed within two weeks of their hearing. That is roughly the amount of time we have left before we expect to adjourn. Unless substantial issues arise during today's hearing, I am prepared to expedite consideration of these nominees like we did for President Bush's nominees. We have often been able to do this at the end of a Congress, and this year should be no exception-- especially given the high level of judicial vacancies plaguing our Federal courts. I remind Senate Republicans that the Senate confirmed an Alabama nominee to the district court within two days of his vote by the Judiciary Committee just a couple years ago. There have literally been hundreds of judicial confirmations within 14 days of our Judicial Committee hearing including more than 600 confirmed since World War II in just one week.

I am particularly interested in moving quickly to fill judicial emergency vacancies, like the one in the Central District of California that Judge Beverly O'Connell is nominated to fill. That district is one of our Nation's busiest, and delays on her nomination do not benefit the people of California. We expedited nominees to that district four times during the Bush administration in recognition of its high caseloads, and we should do so now. Of the four nominees before us today, two would fill vacancies that have been open for more than a year. Let us work together as we have in the past to expedite these nominations to Senate confirmation.

The nomination of Shelly Dick to the Middle District of Louisiana has been stalled since she was nominated back in April because the Republican Senator from that state would not return a "blue slip" indicating his support. Following President Obama's reelection in November, he finally relinquished his hold on the nomination. It is past time to confirm this nominee. Now that Senator Vitter has indicated, after an eight-month delay, that he supports the nomination, we should expedite Senate consideration.

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I see no reason why the Senate should not confirm all four of the nominees appearing before us today before the end of the year. We should allow these nominees to get to work on behalf of the American people.

# # # #

**Written Questions of Senator Tom Coburn, M.D.**

Shelly Deckert Dick

*Nominee, United States District Judge for the Middle District of Louisiana*

U.S. Senate Committee on the Judiciary

December 19, 2012

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1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?
  - a. If not, please explain.
2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?
  - a. If not, please explain.
3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?
4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?
  - a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?
    - i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.
5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?
  - a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?
  - b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

**Written Questions of Senator Tom Coburn, M.D.**

Andrew Patrick Gordon

*Nominee, United States District Judge for the District of Nevada*

U.S. Senate Committee on the Judiciary

December 19, 2012

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**Written Questions of Senator Tom Coburn, M.D.**  
 Ketanji Brown Jackson  
*Nominee, United States District Judge for the District of Columbia*  
 U.S. Senate Committee on the Judiciary  
 December 19, 2012

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**Written Questions of Senator Tom Coburn, M.D.**

Beverly Reid O'Connell

*Nominee, United States District Judge for the Central District of California*

U.S. Senate Committee on the Judiciary

December 19, 2012

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Questions for Judicial Nominees  
Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).



**Written Questions of Senator Jeff Flake**

Shelley Dick

*Nominee, United States District Judge for the Middle District of Louisiana*

U.S. Senate Committee on the Judiciary

January 25, 2013

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1. What qualities do you believe all good judges possess?
  - a. How does your record reflect these qualities?
2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?
  - a. If so, how do you define original meaning originalism?
3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?
  - a. How does the Judicial Branch contribute to this system of checks and balances?
4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.
  - a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?
  - b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?
  - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.

**Written Questions of Senator Jeff Flake**

Andrew Gordon

*Nominee, United States District Judge for the District of Nevada*

U.S. Senate Committee on the Judiciary

January 25, 2013

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1. What qualities do you believe all good judges possess?
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**Written Questions of Senator Jeff Flake**

Ketanji Jackson

*Nominee, United States District Judge for the District of Columbia*

U.S. Senate Committee on the Judiciary

January 25, 2013

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  - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.

**Written Questions of Senator Jeff Flake**

Beverly O'Connell

*Nominee, United States District Judge for the Central District of California*

U.S. Senate Committee on the Judiciary

January 25, 2013

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  - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.

**Senator Chuck Grassley  
Questions for the Record**

**Shelly Deckert Dick  
Nominee, U.S. District Judge for the Middle District of Louisiana**

1. You have very limited criminal law experience. If you are confirmed, how will you prepare yourself to handle the criminal issues that will appear before you?
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?
9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

11. You have spent most of your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
12. Please describe with particularity the process by which these questions were answered.
13. Do these answers reflect your true and personal views?

**Senator Chuck Grassley  
Questions for the Record**

**Andrew P. Gordon  
Nominee, U.S. District Judge for the District of Nevada**

1. At your hearing, I asked you about a paper you had written some years ago. I specifically asked if your views had changed; you replied Yes, “Somewhat.” Can you be more specific on how your views have changed? For example:
  - a. Do prostitution laws “discriminate against women?”
  - b. Is there any government interest in the private conduct between consenting adults?
  - c. Are there other conclusions you drew in your paper that you would clarify or revise – please explain in detail.
2. Your college paper on prostitution has somewhat of a libertarian undercurrent. Similarly, we are seeing a small but growing trend along these lines in drug laws in some states. Recently, a few states and local jurisdictions have legalized marijuana.
  - a. If Nevada legalized marijuana, how would you approach a case where there was a conflict between the state law and federal drug laws?
  - b. Should state law have any influence on a judges’ enforcement or upholding of the constitutionally of a federal statute?
  - c. What if the executive branch declines to enforce federal law on a uniform basis? Suppose the U.S. Attorney for the District of Nevada continued to prosecute individuals under federal drug laws even while federal authorities might decline to prosecute in other States where marijuana has been legalized? Would that have any bearing on how you would approach the case?
3. Does the executive branch’s failure to enforce a constitutionally-sound law unilaterally invalidate the law?
4. What is the most important attribute of a judge, and do you possess it?
5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

6. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
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12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?



**Senator Chuck Grassley  
Questions for the Record**

**Ketanji Brown Jackson  
Nominee, U.S. District Judge for the District of Columbia**

1. Please identify the provision in the Fair Sentencing Act of 2010 that granted authority for the United States Sentencing Commission to give retroactive effect to parts of the Commission's permanent amendment to the federal sentencing guidelines that implements the Act.
2. The intent of the Fair Sentencing Act of 2010 was that new sentencing guidelines were to be applied only prospectively. As a Commissioner and Vice-Chair of the Sentencing Commission, what led you to believe that Congress intended a retroactive application?
3. In arriving at your decision to support retroactive application, what weight did you give to concerns regarding administrative and financial burdens that would result from retroactive application?
4. The Sentencing Commission determined that approximately 12,000 prison inmates would be released because of retroactive application. As a Commissioner, what weight did you give to this factor in arriving at your vote to support retroactive application of the amendment?
5. Please explain how the release of 12,000 prisoners, with high recidivism rates, helps to preserve public safety.
6. Given that the Sentencing Commission previously reduced crack cocaine sentences – in 2007 without Congressional approval – why do you believe it is fair to give these defendants a sentencing windfall by granting another opportunity for further sentence reductions?
7. Please provide to the Committee any prepared statements, or transcripts of statements you made at any hearings, public meetings, or Commission business meetings regarding crack cocaine sentencing.
8. Do you agree that the sentencing guidelines, if applied properly and followed faithfully, can go a long way to assure predictability and uniformity in sentencing?

9. If you are confirmed, how would you apply the sentencing guidelines?
10. At your hearing, I asked you about your understanding of the current state of law regarding those detained as a result of the United States Global War on Terrorism. Now that you have had time to review that issue, please provide a response.
  - a. How will you approach terrorism/detainee issues, if confirmed?
  - b. Will you recuse, if assigned terrorism/detainee cases?
11. You have participated in events involving the American Constitution Society for Law and Policy. There is nothing wrong with participation or membership in such groups. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, indicated that a goal of the organization is “countering right-wing distortions of our Constitution.” Do you agree with this sentiment? If confirmed, would you follow what Mr. Edelman has described as a “progressive perspective of the constitution”?
12. What is your view of the role of the courts on improving the lives of everyday citizens?
13. Do you believe, as Delegate Norton testified, that the citizens of her district are “denied many of the ordinary rights enjoyed by other Americans.” If so, what would be your role as a District Judge for the District of Columbia, to identify and guarantee those rights?
14. What is the most important attribute of a judge, and do you possess it?
15. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
16. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
17. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
18. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
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22. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
23. You have spent your entire legal career as an advocate for your clients, or in public policy positions. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
24. Please describe with particularity the process by which these questions were answered.
25. Do these answers reflect your true and personal views?

**Senator Chuck Grassley  
Questions for the Record**

**Beverly Reid O'Connell  
Nominee, U.S. District Judge for the Central District of California**

1. You indicated in your questionnaire that you were unable to find notes, transcripts, or recordings for your June 1, 2005 panel discussion on misconceptions of the United States Patriot Act. Could you provide the committee with a more detailed description of the points covered in that presentation?
2. You indicated that you were involved in Fetchik v. Circuit City Stores, Inc. as counsel for Circuit City. You wrote that "Circuit City retained new counsel prior to disposition". Please explain the circumstances of why new counsel was retained.
3. The majority of your career has been spent handling criminal cases. If confirmed, how will you prepare yourself to preside over the complicated civil matters that would come before you?
4. In October, 2012 you taught a class on California's Basic Felony Sentencing. One slide of your presentation was entitled "What Doesn't Work" and listed several factors that do not help prisoners from reoffending. One factor listed is "Drug education programs". Will you please explain why, in your opinion, drug education programs do not work?
5. What is the most important attribute of a judge, and do you possess it?
6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
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13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?

**Questions for the Record**

Hearing: Nominations

December 12, 2012

Submitted by Senator Amy Klobuchar

**Questions for all judicial nominees:**

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Response of Shelly D. Dick**  
**Nominee to be United States District Judge for the Middle District of Louisiana**  
**to the Written Questions of Senator Tom Coburn, M.D.**

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

**a. If not, please explain.**

Response: The Constitution is the founders' expression of fundamental laws and principles that prescribe the nature, functions, and limits of the United States government. The Constitution vests certain powers in the federal government and also specifies certain limitations on the federal government.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

**a. If not, please explain.**

Response: The role of the judiciary is to follow and apply the rule of law as established by precedent. The role of a judge in the United States District Courts in Louisiana would be to follow the law as enunciated by the United States Supreme Court and the United States Court of Appeal for the Fifth Circuit.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: If confirmed as a District Court judge, I would look first to the precedent of the United States Supreme Court and then the United States Court of Appeals for the Fifth Circuit. Absent such precedent, I would carefully analyze the plain language of the statute guided by the principle that, whenever possible, the statute should be read to be harmonious with the Constitution of the United States. Lastly, I would look to the precedent of other courts as persuasive authority.

- 4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not studied Justice Kennedy's opinion in *Roper v. Simmons*. In any event, I do not believe it would be appropriate for me to express my personal opinion because if confirmed it would be my duty to apply the law as enunciated by the United States Supreme Court.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: If confirmed as a District Court judge it would be my duty to apply the analytical framework enunciated by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. It is my belief that the laws of states and foreign nations do not provide binding precedent in matters involving constitutional interpretation.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: Not applicable.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Not applicable.

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No.



**Written Questions of Senator Ted Cruz**

Shelly Dick

*Nominee, United States District Judge for the Middle District of Louisiana*

U.S. Senate Committee on the Judiciary

January 25, 2013

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Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: Although I have read opinions handed down by the Warren, Burger and Rehnquist Courts, I have not studied the individual justices to a degree that would enable me to accurately characterize a particular justice's philosophy as analogous to my own. I believe there are several facets and characteristics that are fundamental to a sound judicial philosophy, including thoughtfulness, careful deliberation, thorough research and commitment to the rule of law and the principle of stare decisis.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: I am not a student of the various doctrinal forms of originalism and thus I am not equipped to comment upon the intricacies of those distinctions. However, I believe that the first step in the construction of any constitutional provision is the plain language of the provision itself. If the plain language is subject to different interpretations or ambiguous then it is appropriate to consider the original intent of the drafters. As stated by the United States Supreme Court in 1838 "the proper mode of considering [an] article of the constitution, in relation to the judicial power, is to take the constitution as a whole, and keep constantly in mind the grand design and intention of its framers". *State of Rhode Island v. Massachusetts*, 37 U.S. 657, 673 (1838). I am also aware that in *Dist. of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008), Justice Scalia opined that "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them". If confirmed as a District Court judge I will look to and apply the constitutional construction guidelines enunciated by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed as a District Court judge, under no circumstance would I overrule precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit.

### Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: As recognized by the United States Supreme Court in *Garcia* and other cases, the States retain all authority not divested by the United States Constitution. If confirmed as a District Court judge I would be obliged to apply United States Supreme Court precedent that addresses the limits on federal powers and state sovereignty, including *Garcia* as well as *New York v. U.S.* 505 U.S. 144 (1992), *Printz v. U.S.* 521 U.S. 898 (1997), *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) and *Alden v. Maine*, 527 U.S. 706 (1999).

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: According to recent United States Supreme Court precedent, Congress may regulate purely local non-economic activity if the failure to regulate the activity at issue would "undercut" the regulation of an interstate market. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005). If confirmed as a District Court judge I would be bound by the relevant precedent of the United States Supreme Court including *U.S. v. Lopez*, 514 U.S. 549 (1995), *U.S. v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*, 545 U.S. 1 (2005).

### Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: In *Youngstown Sheet and Tube Co. v. Sawyer*, 342 U.S. 579, 585 (1952), the United States Supreme Court held that the President's authority to issue executive orders derives from either an act of congress or the Constitution. Thus, an executive order or action that is not founded upon congressional authority or the Constitution may be declared unenforceable by the judicial branch.

### Individual Rights

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: For purposes of substantive due process protection, fundamental rights include those rights enumerated in the Bill of Rights and those liberties that the United States Supreme Court has found to be "deeply rooted in this Nation's history and traditions". *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Equal Protection Clause of the United States Constitution prohibits States from denying equal protection to any person. The United States Supreme Court has interpreted this as requiring that "similarly situated" persons be treated equally. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Race, alienage, national origin and gender are examples of State classifications that require heightened scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: I am aware that in 2003, Justice O'Connor, writing for the United States Supreme Court, observed that in time the use of racial preferences in admission practices in higher education may no longer be necessary. I am aware that the United States Supreme Court is currently considering the constitutionality of affirmative action in university admissions, *Fisher v. University of Texas*, 132 S.Ct. 1536 (Feb. 21, 2012). Thus, as a prospective district court judge I believe it would be inappropriate for me to offer any opinion on the Court's statements in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

**Written Questions of Senator Jeff Flake**

Shelly Dick

*Nominee, United States District Judge for the Middle District of Louisiana*

U.S. Senate Committee on the Judiciary

January 25, 2013

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**1. What qualities do you believe all good judges possess?**

Response: I believe there are several facets and characteristics that are fundamental to a sound judicial philosophy, including thoughtfulness, careful deliberation, thorough research and commitment to the rule of law and the principle of stare decisis.

**a. How does your record reflect these qualities?**

Response: In my private practice I endeavored always to carefully understand the nature and scope of the legal issues presented and to thoroughly research applicable legal doctrines and the rule of law in formulating the advice given or the position advocated. In my role as an administrative hearing officer for the Louisiana Workforce Commission I was thorough in my research, thoughtful and careful in my deliberations, and I faithfully applied controlling precedent and the rule of law in the cases that came before me.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

Response: The first step in the construction of any constitutional provision is the plain language of the provision itself. If the plain language is subject to different interpretations or is ambiguous then it is appropriate to consider the original intent of the drafters. As stated by the United States Supreme Court in 1838 “the proper mode of considering [an] article of the constitution, in relation to the judicial power, is to take the constitution as a whole, and keep constantly in mind the grand design and intention of its framers”. *State of Rhode Island v. Massachusetts*, 37 U.S. 657, 673 (1838). If confirmed as a District Court judge I will look to and apply the constitutional construction guidelines enunciated by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

**a. If so, how do you define original meaning originalism?**

Response: I am not a student of the different doctrinal forms of originalism. However after reading United States Supreme Court case law in preparation for providing a response to this question, it is my understanding that original meaning originalism refers to the view that “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from

technical meaning.” *United States v. Sprague* 282 U.S. 716, 731 (1931). According to Justice Scalia, “[n]ormal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008).

3. **In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?**

Response: The United States Constitution grants limited and enumerated powers to the federal government. Article I, Section 8 of the United States Constitution grants certain enumerated powers to Congress. The Bill of Rights limits the powers of Congress. Likewise Articles II and III set forth the scope of the presidential and judicial powers respectively. The powers not conferred upon the federal government are expressly reserved to the States by the Tenth Amendment.

- a. **How does the Judicial Branch contribute to this system of checks and balances?**

Response: The fundamental role of the judicial branch is to protect and uphold the United States Constitution. Although congressional acts are presumed constitutional, *U.S. v. Morrison*, 529 U.S. 598, 607 (2000), it is the role of the judicial branch to determine whether an act of Congress is violative of the United States Constitution. *Marbury v. Madison*, 1 Cranch 137 (1803).

4. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: The United States Supreme Court distinguished prior Commerce Clause case law in *Lopez* and *Morrison* but the court did not expressly overrule its prior precedent.

- b. **In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: If confirmed as a District Court judge it will be my obligation to follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. According to recent United States Supreme Court precedent Congress may regulate interstate commerce in three areas: “First, Congress can regulate the channels of interstate commerce. Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce. Third, Congress has the power to regulate activities that substantially affect interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005) (citations omitted).

**c. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: No.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: The Tenth Amendment reserves to the States all powers that the States did not delegate to the federal government by way of the Constitution. In *New York v. United States*, 505 U.S. 144, 156 (1992), Justice O’Connor explained: “If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress.” The United States Supreme Court has held that the Tenth Amendment prohibits Congress from requiring States to “make or enforce” specific laws. *New York v. United States*, 505 U.S. 144, 156 (1992) and *Printz v. United States*, 521 U.S. 898 (1997). The United States Supreme Court has also determined that the Tenth Amendment confirms that Congress may not abrogate a State’s sovereign immunity. *Alden v. Maine*, 527 U.S. 706 (1999).

**Response of Shelly D. Dick**  
**Nominee to be United States District Judge for the Middle District of Louisiana**  
**to the Written Questions of Senator Chuck Grassley**

- 1. You have very limited criminal law experience. If you are confirmed, how will you prepare yourself to handle the criminal issues that will appear before you?**

Response: I would study criminal law statutes, United States Supreme Court precedent, and the Federal Rules of Criminal Procedure. I would attend criminal proceedings presided over by my District Court colleagues. Most importantly, I would thoroughly familiarize myself with facts and issues in each case *before* it comes before me for hearing or other determination in order to fully research the relevant law applicable to that particular case.

- 2. What is the most important attribute of a judge, and do you possess it?**

Response: A judge should be fair, impartial and tolerant. A judge should apply the rule of law equally without bias or sympathy and treat every litigant, regardless of color, race, creed, position, or means, with dignity and respect. In addition a judge should walk humbly, by which I mean to never allow the power of the office to influence decisions or the manner in which litigants are treated.

Yes. I believe I possess these attributes.

- 3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Foremost, a judge should be a student of law. A judge should display an even temper, exercise patience, listen carefully, and strive to provide a timely and efficient process to the litigants. I believe that the most important quality of a judge is to carefully research and discern the rule of law to be applied to the particular facts of the case and to uphold the rule of law in a fair, impartial, and unbiased manner.

- 4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the application or interpretation of a statute is at issue, I would apply the plain and clear words of the statute. I would also look to analogous case law and precedent from the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit to provide guidance.

- 6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: As a District Court Judge, it would be my solemn duty to apply the law as set forth by the United States Supreme Court and United States Court of Appeals for the Fifth Circuit, regardless of any disagreements I might have with the decisions of those courts.

- 7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute is unconstitutional if it violates an express prohibition or limitation in the Constitution or exceeds the enumerated powers of Congress.

- 8. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No.

- 9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: In my view the best way to manage the caseload is to enforce the Federal Rules of Procedure and court rules and implement a docket management protocol, including the issuance of scheduling orders. It has been my experience that adherence to uniform rules of procedure and compliance with court scheduling orders encourages efficiency by the litigants and, as a result, promotes expeditious resolution of disputes.

- 10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Docket management is a critical task for a District Court judge. As a litigator in private practice, I recognize that litigation can be very costly to the litigants; therefore efficiency and expedience are of paramount importance. If confirmed I would issue scheduling orders, set and adhere to pre-trial deadlines, decide pre-trial motions expeditiously, encourage the parties to streamline issues for trial, and set firm trial dates.



- 11. You have spent most of your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: As a District Court judge I would be an advocate for the rule of law and not for a particular position or viewpoint. I would reach decisions first, by reading the pleadings filed in order to understand the facts and issues in question, second, by listening earnestly and with tolerance to the arguments of the parties, third, by researching and analyzing the applicable precedent and laws and, finally, by applying the law to the facts before the court.

I anticipate that the most challenging part of transition will be the need to quickly gain a solid working knowledge of criminal law and procedure. I believe that I am intellectually equipped to meet this challenge.

- 12. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions via e-mail from the Department of Justice on December 19, 2012. On December 20<sup>th</sup>, I drafted my responses to the questions. I returned responses to these questions and the written questions of other Senators to the Department of Justice on the afternoon of December 20, 2012 and the morning of December 21, 2012. I discussed my responses with a representative of the Department of Justice on December 23, 2012 and authorized the Department of Justice to submit these responses to the United States Senate.

- 13. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Shelly D. Dick**  
**Nominee to be United States District Judge for the Middle District of Louisiana**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: I believe that a judge should be fair, impartial, tolerant, and even tempered. A judge must apply the rule of law to the facts of the particular case before the court and treat every litigant with dignity and respect, regardless of color, race, creed, position, or means. A judge's role is to resolve disputes in a just, timely, efficient, and professional manner in accord with the rule of law and the rules of procedure.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I believe that a judge's demeanor should instill trust, confidence, and faith in the legal system. If confirmed, I will apply the rule of law and the rules of procedure equally to all parties and treat all litigants with dignity and respect regardless of their background, political beliefs, or financial means.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: As a District Court judge I would be obliged to apply the doctrine of stare decisis. The doctrine of stare decisis is the bedrock of consistency and predictability in the law and, as such, it is a principle of particular importance at the District Court level.

**Response of Andrew P. Gordon**  
**Nominee to be United States District Judge for the District of Nevada**  
**to the Written Questions of Senator Tom Coburn, M.D.**

1. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

- a. **If not, please explain.**

Response: The Constitution expresses the core concepts and foundations of our government and the fundamental rights of citizens. Those principles do not change over time, except through Constitutional amendment.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

- a. **If not, please explain.**

Response: The core concepts and principles of the Constitution do not change over time. District judges are to follow the legal precedents issued by the Supreme Court of the United States and the Courts of Appeals. If those precedents evolve over time (e.g., from *Plessy v. Ferguson* to *Brown v. Board of Education*), district judges are bound to abide by those new precedents.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: I would begin with the plain language of the Constitution and the statute at issue. If the statute can be reasonably interpreted as constitutional, the inquiry is over. If not, I would look to the precedents of the Supreme Court. If there were none, I would look to precedents within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing the constitutionality of analogous statutes.

4. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not studied that opinion. In any event, as a prospective judge, I do not believe I should express a personal opinion about any Supreme Court decision. If confirmed, I would faithfully follow all decisions of the Supreme Court because they are binding precedent.

- a. **When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: The laws and traditions of foreign countries do not control the interpretation of the Constitution of the United States. The Supreme Court has held that reference to the laws of the various states is permissible in certain circumstances. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

- i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: As set forth above, I do not believe the laws and traditions of foreign countries control the interpretation of the Constitution.

5. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: Judges should not rely on foreign laws or decisions to determine the meaning of the Constitution.

- a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Unless directed to do so by a legal precedent of the Supreme Court, I cannot think of such a circumstance.

- b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No.

**Written Questions of Senator Ted Cruz**

Andrew Gordon

*Nominee, United States District Judge for the District of Nevada*

U.S. Senate Committee on the Judiciary

January 25, 2013

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Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Judges must be fair, must not pre-judge cases or issues, and must treat all parties with respect and dignity. Federal judges must keep in mind that their jurisdiction and their role in government are limited; judges must respect, and not usurp, the roles of the legislative and executive branches. A judge must remember that he is a public servant, and that the courts belong to the citizens. I have not studied the Supreme Court Justices, so I cannot say which Justice's philosophy is most analogous to mine.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: In my 25 years of practicing law, I have not been called upon to employ originalism -- or any other interpretive method -- to interpret the Constitution. When deciding a case, a district judge should begin by looking for precedents from the Supreme Court or the Courts of Appeals. If no precedent exists and the answer cannot be drawn from analogous cases, the judge should examine the plain language of the Constitution, and try to determine its meaning and how it would apply to the current case by all appropriate means. That may include discerning the original meaning of the language through historical and textual analysis, as demonstrated by the Supreme Court in *Dist. of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed as a judge, I would follow the precedents of the Supreme Court and the Court of Appeals.

Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially**

created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: As a prospective judge, I do not believe it is appropriate for me to express a personal opinion about any Supreme Court decision. *Garcia* represents a binding precedent of the Supreme Court. If I am confirmed as a judge and *Garcia* remained binding precedent, I would faithfully follow it regardless of whether I agreed with it.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Supreme Court has held that Congress' Commerce Clause power extends to non-economic activity, but only in limited circumstances. Justice Scalia summarized the Court's precedents in this area in his concurring opinion in *Gonzales v. Raich*: "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." 545 U.S. 1, 37, 125 S. Ct. 2195, 2217, 162 L. Ed. 2d 1 (2005). Justice Scalia further wrote:

As *Lopez* itself states, and the Court affirms today, Congress may regulate noneconomic intrastate activities only where the failure to do so "could ... undercut" its regulation of interstate commerce. [quoting *U.S. v. Lopez*, 514 U.S. 549, 561, 115 S.Ct. 1624 (1995)]

*Lopez* and *Morrison* affirm that Congress may not regulate certain "purely local" activity within the States based solely on the attenuated effect that such activity may have in the interstate market. But those decisions do not declare noneconomic intrastate activities to be categorically beyond the reach of the Federal Government.

545 U.S. at 38-39, 125 S. Ct. at 2218. Because the decisions discussed by Justice Scalia remain binding precedent of the Supreme Court, I would follow them.

#### Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The federal government (including the authority of the President) "is acknowledged by all to be one of enumerated powers." *McCulloch v. Maryland*, 4 Wheat. 316, 405, 4 L.Ed. 579 (1819). "The President's power ... must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866, 96 L. Ed. 1153 (1952). Thus, if the President undertakes an action that is not authorized by the Constitution or an act of Congress, and a challenge to that action is properly brought in a case within the court's jurisdiction, then a federal judge must invalidate the action as beyond the President's authority.

Individual Rights**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: Historically, the Supreme Court has struggled to define which rights are "fundamental" for purposes of substantive due process analysis. Over time the Court has selectively incorporated most of the provisions of the Bill of Rights and applied them to the states under the Fourteenth Amendment. The Court also has recognized some fundamental rights not specifically named in the Constitution, including the right to privacy, the right to make decisions about procreation and contraception, and the right to private education. If called upon to address such an issue as a district judge, I would follow the precedents of the Supreme Court.

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: Pursuant to Supreme Court precedent, classifications are subject to "strict scrutiny" if they categorize on the basis of race, national origin or alienage, or if they infringe upon fundamental rights. An "intermediate level" of scrutiny is used if the law under review categorizes on the basis of gender or illegitimacy. If the Supreme Court has found that additional classifications should be subjected to heightened scrutiny, I would follow those precedents.

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: This issue is presently before the Supreme Court, so there may be additional guidance on this topic in the near future. I cannot predict the outcome of that case. If confirmed as a district court judge, I would apply *Grutter* and any other binding Supreme Court decision in this area of law regardless of my expectations.

**Written Questions of Senator Jeff Flake**  
 Andrew Gordon  
*Nominee, United States District Judge for the District of Nevada*  
 U.S. Senate Committee on the Judiciary  
 January 25, 2013

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**1. What qualities do you believe all good judges possess?**

Response: Good judges faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Good judges are fair, patient and careful listeners; they do not pre-judge a case or issue; they treat all parties with respect and dignity. Federal judges must remember that their jurisdiction is limited, and they must respect the roles of the legislative and executive branches of government. A judge must keep his ego in check, must remember that he is a public servant, and must remember that the courts belong to “we the people.”

**a. How does your record reflect these qualities?**

Response: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. I have always treated the parties and their counsel with respect, regardless of their station in life. I do not pre-judge cases or issues, I read all of the papers submitted to me, and I listen carefully to the arguments and evidence. If confirmed as a judge, I will approach cases in the same way.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

Response: When deciding a case, a district judge should begin by looking for precedents from the Supreme Court or the Courts of Appeals. If no precedent exists and no answer can be drawn from analogous cases, the judge should examine the plain language of the Constitution, and try to determine its meaning and how it would apply to the current case by all appropriate methods. That may include discerning the original meaning of the language through historical and textual analysis, as demonstrated by the Supreme Court in *Dist. of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

**a. If so, how do you define original meaning originalism?**

Response: I do not have a personal definition of “original meaning originalism.” In my 25 years of practice, I have not had to define or employ that term or technique of interpretation. Nevertheless, I have a general understanding that it focuses on the meaning that the words in the Constitution had to the public at the time of its adoption. Thus, it poses the question: “What was the ‘original public meaning’ of the text?”



3. In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?

Response: As Madison points out in Federalist Paper 51, in the “compound republic of America,” power is surrendered by the people to “two distinct governments,” state and federal. Within each of those governmental structures, power is then subdivided among various branches and departments. “Hence a double security arises to the rights of the people.” Thus, the state and federal governments provide checks and balances against each other, and the various branches within each government provide checks and balances against each of the others. *See also, National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2576, 183 L. Ed. 2d 450 (2012) (opinion of Roberts, C.J.) (“The independent power of the States also serves as a check on the power of the Federal Government: ‘By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.’ *Bond v. United States*, 564 U.S. ----, ----, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011).”). Moreover, as Chief Justice Roberts wrote in *National Federation v. Sebelius*:

The Federal Government “is acknowledged by all to be one of enumerated powers.” [quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405, 4 L.Ed. 579 (1819)] That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government’s powers. ... The enumeration of powers is also a limitation of powers, because “[t]he enumeration presupposes something not enumerated.” *Gibbons v. Ogden*, 9 Wheat. 1, 195, 6 L.Ed. 23 (1824). The Constitution’s express conferral of some powers makes clear that it does not grant others. And the Federal Government “can exercise only the powers granted to it.” *McCulloch*, *supra*, at 405. ... If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution.

*National Federation v. Sebelius*, 132 S. Ct. at 2576.

**a. How does the Judicial Branch contribute to this system of checks and balances?**

Response: The jurisdiction of federal judges is limited. Judges must respect and not usurp the roles of the legislative and executive branches. However, if one branch of government usurps the role of another branch, or if the legislative or executive branch acts beyond its powers enumerated by the Constitution (or not surrendered by the people), the federal courts must rein in such action, in order to preserve the system established in our Constitution.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

- a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?

Response: The majority, concurring and dissenting opinions in *Lopez* trace the development of the Supreme Court's Commerce Clause jurisprudence over time. Justice Kennedy recognized in his concurring opinion that "[t]he progression of our Commerce Clause cases from *Gibbons* to the present was not marked, however, by a coherent or consistent course of interpretation. . . ." 514 U.S. at 568. Thus, it is difficult to label *Lopez* and *Morrison* as "inconsistent" with earlier decisions that were not of a "coherent or consistent course." Regardless of my opinion whether *Lopez* and *Morrison* are consistent or not with prior decisions, if confirmed as a district judge and I am presented with a case raising these issues, I would faithfully follow the Constitution and the precedents of the Supreme Court.

- b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?

Response: Pursuant to the *Lopez*, *Morrison*, and *Gonzalez v. Raich* decisions, Congress may legislate under the Commerce Clause within three "broad categories." "First, Congress may regulate the use of the channels of interstate commerce." *Lopez*, 514 U.S. at 558. "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce...." *Id.* "Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, ... *i.e.*, those activities that substantially affect interstate commerce." *Id.* at 558-559.

- c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: Many (but not all) transactions involving the exchange of money are subject to Congress's Commerce Clause power. For instance, the exchange of money in interstate or international commerce is clearly subject to Congress's Commerce Clause power. However, not all transactions involving the exchange of money are subject to Congress's Commerce Clause power.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: The 10<sup>th</sup> Amendment guarantees to the states all “powers not delegated to the United States by the Constitution, nor prohibited by it to the States,” nor reserved “to the people.” As James Madison wrote in The Federalist No. 45, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” Thus, it would be nearly impossible to list, with specificity, every power guaranteed to the states. Nevertheless, states may exercise their police powers within their borders. For example, states are empowered to define and prosecute crimes and penalties; assess and collect taxes on income, sales and real property; issue building permits and driver licenses; administer public schools; zone property for development; and undertake many other activities.

**Response of Andrew P. Gordon**  
**Nominee to be United States District Judge for the District of Nevada**  
**to the Written Questions of Senator Chuck Grassley**

1. **At your hearing, I asked you about a paper you had written some years ago. I specifically asked if your views had changed; you replied Yes, "Somewhat." Can you be more specific on how your views have changed? For example:**

- a. **Do prostitution laws "discriminate against women?"**

Response: I wrote the paper to which you are referring while I was a college student, and I have not researched the legal or policy issues regarding such laws, or devoted any significant attention to the paper itself, since writing it 28 years ago. Therefore, I do not know the current state of prostitution laws. However, to the extent that women are prosecuted for prostitution but their male customers are not prosecuted for patronizing them (or if no law prohibits such patronage), that could be considered discriminatory towards women. As stated above, however, I have not performed the research to determine whether such discrimination actually exists today.

- b. **Is there any government interest in the private conduct between consenting adults?**

Response: It is up to Congress and state legislatures to determine which conduct to regulate, including private conduct between consenting adults. The job of the court is to faithfully apply those laws and the United States Constitution.

- c. **Are there other conclusions you drew in your paper that you would clarify or revise – please explain in detail.**

Response: As stated above, I wrote the paper 28 years ago. It is likely that the paper contains some conclusions that I would not reach today, or that I would phrase differently. Because I have not studied these issues since writing the paper, I cannot identify which specific statements I would clarify or revise if I were to address the subject today. In any event, if I were confirmed as a district court judge and presented with a case involving prostitution or any other issue, my decision would be based solely on the law – any personal views I had would play no role.

2. **Your college paper on prostitution has somewhat of a libertarian undercurrent. Similarly, we are seeing a small but growing trend along these lines in drug laws in some states. Recently, a few states and local jurisdictions have legalized marijuana.**

- a. **If Nevada legalized marijuana, how would you approach a case where there was a conflict between the state law and federal drug laws?**

Response: First, pursuant to the supremacy clause, state statutes cannot trump federal statutes. I would look to the legal precedents on the supremacy clause from the Supreme Court and from within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing analogous statutes.

**b. Should state law have any influence on a judges' enforcement or upholding of the constitutionally of a federal statute?**

Response: Pursuant to the supremacy clause, state statutes cannot trump federal statutes. State law generally does not play a role in interpretation of the Constitution. However, the Supreme Court has occasionally looked to state law in the Eighth Amendment context. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

**c. What if the executive branch declines to enforce federal law on a uniform basis? Suppose the U.S. Attorney for the District of Nevada continued to prosecute individuals under federal drug laws even while federal authorities might decline to prosecute in other States where marijuana has been legalized? Would that have any bearing on how you would approach the case?**

Response: I am not familiar with the law in this area, and cannot say what, if any, bearing those facts might have on the legal analysis. If confirmed as a district judge and I am presented with a case raising these issues, I would faithfully follow the United States Constitution and the legal precedents of the Supreme Court.

**3. Does the executive branch's failure to enforce a constitutionally-sound law unilaterally invalidate the law?**

Response: No.

**4. What is the most important attribute of a judge, and do you possess it?**

Response: I do not believe there is one "most important" attribute of a judge, but rather many important attributes. Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Judges must be fair, must be patient and careful listeners, must not pre-judge a case or issue, and must treat all parties with respect and dignity. Federal judges must keep in mind that their jurisdiction is limited, and they must respect, and not usurp, the roles of the legislative and executive branches of government. I possess all of these traits.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be patient and courteous, treating the parties with respect and listening carefully to them. A judge must keep his ego in check, must remember that he is a public servant, and must remember that the courts belong to "we the people." Having served as a private arbitrator and mediator for more than 10 years, I believe I meet these standards.

6. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would begin with the plain language of the Constitution and the statute at issue. If the language is clear and the answer is found in the plain language, the inquiry is over. If not, and if there were no precedents from the Supreme Court or the Ninth Circuit Court of Appeals, I would look for legal precedent from the other circuits. Absent that, I would look for cases analyzing analogous statutes. I also would look to the context of the specific statute within the broader statutory scheme. If necessary, I would look for legislative history for some guidance.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow the precedents of the Supreme Court and the Court of Appeals.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes are strongly presumed to be constitutional, and if the statute can reasonably be interpreted as constitutional, it should be upheld. If, based upon precedents of the Supreme Court and the Court of Appeals, a statute clearly violates a

provision of the Constitution and it cannot be interpreted as constitutional, it should be declared as unconstitutional.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution?**

Response: No.

- 11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: In my 25 years of practice, I have managed my heavy caseload by calendaring every deadline and building in reminders of upcoming deadlines. I would continue that as a judge. In addition, I would timely address motions, and I would strive to keep the litigants on track and meeting deadlines, to avoid delays. I also would encourage parties to consider settlement where appropriate.

- 12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges have a significant role in controlling the pace and conduct of litigation. If confirmed, I would work with the magistrate judges to ensure that appropriate Discovery Plans and Scheduling Orders are entered; I would enforce deadlines; I would schedule status checks with the litigants as necessary to keep them on track; and I would timely address motions filed by the parties. I also would encourage parties to consider settlement where appropriate.

- 13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. Thus, I have experience ruling upon motions, listening to witnesses, weighing evidence, and deciding cases. If confirmed as a judge, I will continue to approach cases in the same way: keeping an open mind, listening carefully to the arguments of counsel and the testimony of witnesses, conducting legal research as needed, and relying on the precedents of the Supreme Court. I expect that the most difficult part of my transition will be in the area of criminal law. As I testified at my confirmation hearing, I will work hard to learn this area.

- 14. Please describe with particularity the process by which these questions were answered.**

Response: I reviewed the questions and personally drafted my answers on December 20, 2012. I reviewed my answers with an official from the Department of Justice before submitting them to the Committee.

- 15. Do these answers reflect your true and personal views?**

Response: Yes.



**Response of Andrew P. Gordon**  
**Nominee to be United States District Judge for the District of Nevada**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: Judges must be fair, must not pre-judge a case or issue, and must treat all parties with respect and dignity. Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Federal judges must keep in mind that their jurisdiction and their role in government are limited; judges must respect, and not usurp, the roles of the legislative and executive branches. A judge must remember that he is a public servant, and that the courts belong to the citizens.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. I have always treated the parties and their counsel with respect, regardless of their station in life. I do not pre-judge cases or issues, and I listen carefully to the arguments and evidence. If confirmed as a judge, I will continue to approach cases in the same way.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? How does the commitment to *stare decisis* vary depending on the court?**

Response: Business owners, corporate boards, and individual citizens depend on consistency and predictability in the law, so they can make decisions and govern themselves accordingly. *Stare Decisis* is critical to ensuring that predictability. The law and the outcome of cases should not change based upon the individual judge.

**Response of Ketanji B. Jackson**  
**Nominee to be United States District Judge for the District of Columbia**  
**to the Written Questions of Senator Tom Coburn, M.D.**

1. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

**a. If not, please explain.**

Response: The Constitution embodies fundamental principles of limited government authority that originated with the Founders and do not “evolve.”

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

**a. If not, please explain.**

Response: Courts must apply established constitutional principles to new circumstances, but the meaning of the Constitution itself does not evolve nor does it incorporate new understandings resulting from social movements, legislation, or historical practices.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: In analyzing whether a statute infringes upon an individual right, I would look to the plain language of the statute and apply the binding precedents of the Supreme Court and the D.C. Circuit that analyze the statute or an analogous provision. My role as a district court judge would be to apply the law as handed down by the Supreme Court and the D.C. Circuit to the facts before me.

4. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: The Supreme Court’s decision in *Roper* is binding precedent and I would faithfully apply it, if confirmed as a district court judge. I do not believe that it would be appropriate for me to express my personal view of the Supreme Court’s decision. My

personal views on this or any other subject matter would not affect my handling of any case that I might be assigned as a district court judge.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: The laws and traditions of foreign countries are not relevant to the interpretation of the text of the U.S. Constitution. The Supreme Court has indicated that the laws of the American States can be relevant under certain circumstances, and if confirmed, I would faithfully apply any precedent on this issue.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: Please see previous answer.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Please see answer to question 4(a).

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: Any ideas and solutions to legal problems that foreign nationals may have would be matters for Congress to consider in making policy decisions regarding legal issues, not bases for a court’s interpretation of the existing laws of the United States.

**Written Questions of Senator Ted Cruz**

Ketanji Jackson

*Nominee, United States District Judge for the District of Columbia*

U.S. Senate Committee on the Judiciary

January 25, 2013

Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: If confirmed as a district court judge, my judicial philosophy would be to approach each case with professional integrity, meaning strict adherence to the rule of law and application of the law to the facts in a straightforward and transparent manner, without any bias or preconceived notion of how the matter is going to be resolved. The role of a Supreme Court Justice is different than that of a district court judge in that it often extends to the development of broader legal principles to guide the lower courts, and Justices sometimes develop substantive judicial philosophies to guide them in this task. Given the very different functions of a trial court judge and a Supreme Court Justice, I am not able to draw an analogy between any particular Justice's judicial philosophy and the approach that I would employ as a district court judge.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: I believe that district court judges should interpret the Constitution in a manner that is wholly consistent with Supreme Court precedent. I am aware that the Supreme Court has employed originalism when interpreting various constitutional provisions. *See, e.g., U.S. v. Jones*, 132 S. Ct. 945, 949 (2012) (Fourth Amendment); *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 906 (2010) (First Amendment); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 42-57 (2004) (Confrontation Clause); *Alden v. Maine*, 527 U.S. 706, 715-724 (1999) (Eleventh Amendment). Moreover, while the Court has primarily evaluated the original public meaning of the text of the constitutional provision at issue, *see Jones*, 132 S. Ct. at 949, 953; *Heller*, 554 U.S. at 576-77, Supreme Court cases also sometimes refer to the original intent of the Framers, *see Crawford*, 541 U.S. at 53-54, 59, 61. If confirmed as a district court judge, I would follow the analysis of binding Supreme Court precedents when applicable to the cases before me, and I would apply those precedents without regard to any personal view of how the Constitution should be interpreted.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: District court judges must strictly apply precedents and cannot overrule them under any circumstances.

### Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: In *Garcia*, the Supreme Court assessed whether Congress's application of federal wage and hour protections to municipal employees pursuant to the Fair Labor Standards Act contravened any constitutional limit on federal power. I do not believe that it is appropriate for me to express any personal view of the *Garcia* case or the policy matter that the quoted statement addresses. If confirmed as a district court judge, I would strictly adhere to the binding precedents of the Supreme Court in this area, including cases in which the Court has interpreted the Tenth Amendment as a limit on Congress's power for the protection of state sovereign interests. See, e.g., *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Supreme Court has not categorically excluded non-economic activity from Congress's reach under the Commerce Clause, in conjunction with its Necessary and Proper Clause power. See *United States v. Morrison*, 529 U.S. 598, 613 (2000); see also *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring) ("Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."). Nevertheless, the Court has thus far generally "upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *Morrison*, 529 U.S. at 613; see also *United States v. Lopez*, 514 U.S. 549, 561 (1995). In this regard, the Court has held that the Commerce Clause authorizes the regulation of only three categories of activity: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce" and activities that threaten such instrumentalities, persons or things, and (3) activities that "substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. at 558-59 (1995). This is binding precedent, and if confirmed as a district court judge, I would strictly adhere to it as applicable to any case before me without regard to any personal opinion about the scope of Congress' power under the Commerce Clause.

### Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The Supreme Court has addressed the scope of the President's power to issue executive orders or undertake executive actions, with and without congressional authorization. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); see also *Medellin v. Texas*, 552 U.S. 491 (2008); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Dames & Moore v. Regan*, 453

U.S. 654 (1981). Broadly speaking, “[t]he President’s authority to act, as with any exercise of governmental power, ‘must stem either from an act of Congress or from the Constitution itself.’” *Medellin*, 552 U.S. at 524 (citation omitted). The judicially enforceable limits on the President’s ability to act thus include circumstances in which the President acts without express constitutional or statutory authority, or when the executive action impermissibly interferes with the functions that the Constitution assigns to another branch of government, or when the executive action otherwise violates a constitutional or statutory provision.

#### Individual Rights

##### **When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court has generally defined fundamental rights protected by substantive due process as those liberties that are “deeply rooted in this Nation’s history and traditions,” *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977), and among the “fundamental” rights that the Supreme Court has recognized are the rights of family autonomy, custody, travel, access to courts, and voting. District courts should interpret the Constitution in a manner that is wholly consistent with Supreme Court precedents, and if confirmed, I would follow Supreme Court precedent with respect to the evaluation of rights for the purpose of any substantive due process case, as I would with any other Supreme Court case.

##### **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has established that certain classifications—primarily distinctions that the government makes based on suspect classifications such as race, national origin, and gender, or classifications that significantly burden a fundamental right—are subject to a heightened level of scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-42 (1985); *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). District courts should interpret the Constitution in a manner that is entirely consistent with Supreme Court precedents, and if confirmed, I would follow Supreme Court precedent with respect to the evaluation of classifications and tiers of scrutiny for the purpose of the Equal Protection Clause, as I would with any other Supreme Court case.

##### **Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: In *Grutter*, the Supreme Court emphasized that “race-conscious admissions policies must be limited in time,” 539 U.S. at 342, and it posited that the law school involved in that case likely would be able to achieve its interest in a diverse student body, without employing such policies, in the relatively near future. I have no particular insight into the future need for, or ramifications of, the continued use of race in admissions. I am aware that the Supreme Court is currently revisiting the issue of the constitutionality of race-conscious admissions policies in public higher education, and if confirmed as a district court judge, I would apply any binding precedent in this area of the law.

**Written Questions of Senator Jeff Flake**

Ketanji Jackson

*Nominee, United States District Judge for the District of Columbia*

U.S. Senate Committee on the Judiciary

January 25, 2013

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**1. What qualities do you believe all good judges possess?**

Response: A good judge has professional integrity, which includes reverence for the rule of law, total impartiality, and the ability to apply the law to the fairly determined facts of the case without bias or any preconceived notion of how the case will be resolved. A good judge also has the ability to treat everyone who appears before her with dignity and respect. She should have a calm, even-tempered, and thoughtful demeanor, and should rule efficiently and decisively. Additionally, a good judge must be an effective communicator, both orally and in writing.

**a. How does your record reflect these qualities?**

Response: As a result of prior legal training and professional experience, I am able to evaluate complex legal arguments and have developed excellent oral and written communication skills. In my current position, I am also required to look objectively at data and the law and to make fair and unbiased policy determinations. (Although a district court judge is not a policymaker, the skills I employ when evaluating sentencing-related facts and applying federal law are similar to the detached, objective evaluations that a good judge makes.) In addition, as a former advocate in both public and private practice, I have had the privilege of working with people from all walks of life. I understand the importance of patience in relating to other people, and I make it a priority to treat others with respect, no matter who they are.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

Response: I believe that district court judges should interpret the Constitution in a manner that is wholly consistent with Supreme Court precedent. The Supreme Court has relied upon the original meaning of the words and phrases in the Constitution when conducting its constitutional analysis in various cases. *See, e.g., U.S. v. Jones*, 132 S. Ct. 945, 949, 953 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576 - 600 (2008). If confirmed as a district court judge, I would follow the reasoning of binding Supreme Court precedents when applicable to the cases before me, and I would apply them without regard to any personal view of how the Constitution should be interpreted.

**a. If so, how do you define original meaning originalism?**

Response: "Original meaning" originalism is a form of textualism that bases constitutional interpretation on the ordinary meaning of the terms used in the Constitution as understood by average people at the time of the Founding.

3. **In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?**

Response: Our entire constitutional framework is fairly characterized as having been designed to limit the power of the federal government. For example, the powers afforded to Congress are specifically enumerated (*see* Art I, sec. 8), and Congress is prohibited from exercising any power that is not so designated. *See McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819) (“The principle, that [Congress] can exercise only the powers granted to it . . . is now universally admitted.”). Various constitutional provisions also specifically proscribe government action in a number of respects (*see, e.g.*, Art I, sec. 9), including the first ten amendments, which essentially constitute a series of prohibitions against the exercise of government power in a manner that intrudes upon the liberty of individual citizens. Moreover, the Constitution places limits on the government insofar as it divides power between the states and the federal government, and also among the three branches of the federal government, to ensure that the functions of each branch are distinct and constrained and that no one branch can consolidate all power in itself. There are also numerous provisions in the Constitution that detail the authorized democratic process—*e.g.*, provisions that require government officials to be “chosen” by the people, secure for United States citizens the right to vote, and establish specifically the manner of election and limit office holders’ duration of service. These, too, serve as significant constitutional constraints on the scope, size, and composition of government.

- a. **How does the Judicial Branch contribute to this system of checks and balances?**

Response: The Judiciary contributes to the constitutional system of checks and balances because judges have the power to decide when, and under what circumstances, the Constitution’s limits have been reached.

4. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: *Lopez* and *Morrison* marked the first time in nearly 60 years that the Supreme Court invalidated a federal statute as exceeding the power of Congress under the Commerce Clause. The Court’s opinions in those cases distinguished, but did not purport to overrule, prior precedents.



**b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: The Supreme Court has concluded that the Commerce Clause authorizes the federal government to regulate only three categories of activity: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce” and activities that threaten such instrumentalities, persons or things, and (3) activities that “substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). This is binding precedent, and if confirmed as a district court judge, I would strictly adhere to it as applicable to any case before me without regard to any personal opinion about the scope of Congress’ power under the Commerce Clause.

**c. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: No.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: The text of the Tenth Amendment says that the states retain all powers “not delegated to the United States by the Constitution, nor prohibited by it to the States.” Without specifically defining the full scope of the authority that is reserved for the states by virtue of the Tenth Amendment, the Supreme Court has indicated that the states’ residual powers are “significant” and “inviolable,” *New York v. United States*, 505 U.S. 144, 156, 188 (1992), and also that “[t]he principles of limited national powers and state sovereignty are intertwined,” *Bond v. United States*, 131 S. Ct. 2355, 2366 (2011). Moreover, the Court has characterized the powers that the Tenth Amendment reserves for the states as a “mirror image” of the powers that the Constitution grants to the federal government. *New York*, 505 U.S. at 156 (“If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress.”). District court judges are bound by the Supreme Court’s precedents regarding the scope of state power under the Tenth Amendment, and if confirmed as a district court judge, I would faithfully apply the Supreme Court’s precedents in this area, as I would any other Supreme Court case.

**Response of Ketanji B. Jackson**  
**Nominee to be United States District Judge for the District of Columbia**  
**to the Written Questions of Senator Chuck Grassley**

- 1. Please identify the provision in the Fair Sentencing Act of 2010 that granted authority for the United States Sentencing Commission to give retroactive effect to parts of the Commission's permanent amendment to the federal sentencing guidelines that implements the Act.**

Response: The Commission's authority—and duty—to consider giving retroactive effect to the Commission's permanent amendment to the federal sentencing guidelines arose not from the Fair Sentencing Act itself but from another statute passed by Congress, Title 28 section 994(u). Sections 2 and 3 of the Fair Sentencing Act reduce the statutory penalties for certain crack cocaine offenses, and section 8 requires the Commission to make conforming reductions in the sentencing guidelines. As a result, the Commission was required to consider giving retroactive effect to those guideline amendments under section 994(u), which the Commission has long interpreted to require it to consider retroactivity whenever it reduces the term of imprisonment recommended in a guideline.

- 2. The intent of the Fair Sentencing Act of 2010 was that new sentencing guidelines were to be applied only prospectively. As a Commissioner and Vice-Chair of the Sentencing Commission, what led you to believe that Congress intended a retroactive application?**

Response: The Fair Sentencing Act of 2010 is silent on the matter of retroactivity. By contrast, Title 28 section 994(u) expressly states that “[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.” The bi-partisan members of the Commission unanimously determined that, because no provision in the Fair Sentencing Act abrogates the Commission's duties under § 994(u), Congress intended for the Commission to consider the circumstances, if any, and the extent of any retroactive application of the FSA guideline amendments.

- 3. In arriving at your decision to support retroactive application, what weight did you give to concerns regarding administrative and financial burdens that would result from retroactive application?**

Response: Whether or not retroactive application of a guideline amendment will result in administrative and/or financial burdens is one of the three primary factors that the

Commission considers when it undertakes the required retroactivity analysis. At the Commission's hearing on the retroactivity of the FSA amendments, judges, prosecutors and defense counsel testified regarding their experience with administering crack offender retroactivity applications in 2007, and every witness who spoke to this issue testified that the process was not administratively or financially burdensome. I gave great weight to this testimony in arriving at my decision to support retroactivity.

**4. The Sentencing Commission determined that approximately 12,000 prison inmates would be released because of retroactive application. As a Commissioner, what weight did you give to this factor in arriving at your vote to support retroactive application of the amendment?**

Response: The Commission conducted a detailed data analysis regarding the retroactive effect of the FSA guideline amendments and estimated that approximately 12,000 inmates would be eligible to apply for a sentence reduction if the FSA guideline amendments were made retroactive. The submission of such an application does not in itself result in the release of the applying inmate; rather, it permits the sentencing judge to review the individual inmate's sentence and it requires the judge to consider various factors such as the risks to public safety when deciding whether a reduction in the term of imprisonment is appropriate in a particular case. As a Commissioner, I gave great weight to the Commission's data analysis and the fact that a judge would have to make a specific determination regarding the appropriateness of a sentence reduction in each case in arriving at my vote to support retroactivity.

**5. Please explain how the release of 12,000 prisoners, with high recidivism rates, helps to preserve public safety.**

Response: The release of an inmate who has a high risk of recidivism does not help to preserve public safety; consequently, no prisoners were automatically released as a result of the Commission's retroactivity determination. Instead, retroactive application of the FSA guideline amendments permitted certain inmates who had been convicted of crack cocaine offenses to seek a reduced sentence by submitting an application for a penalty reduction to the sentencing court. Under the procedures set forth in Title 18 section 3582(c)(2) and U.S.S.G. § 1B1.10, the sentencing courts that received such applications were required to make individual determinations regarding the appropriateness of a sentence reduction after considering many specific factors, including the potential impact on public safety as a result of reducing an inmate's term of imprisonment.

- 6. Given that the Sentencing Commission previously reduced crack cocaine sentences – in 2007 without Congressional approval – why do you believe it is fair to give these defendants a sentencing windfall by granting another opportunity for further sentence reductions?**

Response: In 2007, the Commission unanimously determined that crack cocaine penalties under the guidelines should be reduced by two levels and that this sentence reduction should apply retroactively. The Fair Sentencing Act subsequently reduced the statutory mandatory minimum penalties and corresponding guidelines for crack cocaine offenses by an even greater amount. The defendants whose sentences were previously reduced by only two levels pursuant to the Commission's action do not receive a windfall as a result of retroactivity; rather, they are provided the same opportunity as other eligible inmates to apply to the sentencing court for an individualized determination regarding the appropriateness of the application of the lower guideline penalties prescribed in the Fair Sentencing Act.

- 7. Please provide to the Committee any prepared statements, or transcripts of statements you made at any hearings, public meetings, or Commission business meetings regarding crack cocaine sentencing.**

Response: There were four occasions in which I participated in public Commission hearings or meetings that considered crack cocaine sentences, all of which were included in the questionnaire that I submitted to the Committee in connection with my nomination:

On October 15, 2010, the Commission held a public meeting concerning the Commission's adoption of a temporary emergency amendment implementing the Fair Sentencing Act. There is no transcript or video of that meeting. The minutes indicate only that I "noted that the proposed amendment is a temporary emergency amendment that seeks to adhere closely to congressional intent and that the Commission will have the opportunity to consider the §2D1.1 guideline in the course of this amendment cycle."

On June 30, 2011, I made a statement at the public Commission meeting in which the Commission unanimously voted to apply the final Fair Sentencing Act guideline amendments retroactively. My Committee questionnaire included a link to the video from this meeting, as well as the meeting minutes. In addition, here is a link to the transcript, which is posted on the Commission's website:

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110630/Meeting\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110630/Meeting_Transcript.pdf).

On March 17, 2011, and June 1, 2011, I questioned witnesses during the Commission's public hearings related to the enactment of the Fair Sentencing Act amendments and retroactivity. As noted in my Committee questionnaire, the hearing transcripts are available on the Commission's website at the following links:

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110317/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110317/Hearing_Transcript.pdf), and

[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Public\\_Hearings\\_and\\_Meetings/20110601/Hearing\\_Transcript.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110601/Hearing_Transcript.pdf).

**8. Do you agree that the sentencing guidelines, if applied properly and followed faithfully, can go a long way to assure predictability and uniformity in sentencing?**

Response: Yes.

**9. If you are confirmed, how would you apply the sentencing guidelines?**

Response: Although the sentencing guidelines are now advisory, sentencing judges must consider the guidelines and policy statements pursuant to 18 U.S.C. § 3553(a)(4) and (a)(5), and the Supreme Court has repeatedly emphasized that sentencing judges must properly calculate and consider the guidelines as the first step of the federal sentencing process. *See, e.g., Rita v. United States*, 127 S. Ct. 2456, 2465 (2007). The guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," *Gall v. United States*, 128 S. Ct. 586, 594 (2007), and they are both "the starting point and the initial benchmark" of federal sentencing. As a Commissioner on the Sentencing Commission, I am well aware of the careful process by which the sentencing guidelines have been developed and the importance of the guidelines in promoting nationwide consistency and uniformity in sentencing. If confirmed as a judge, I will give great weight to the sentencing guideline range in every criminal case.

**10. At your hearing, I asked you about your understanding of the current state of law regarding those detained as a result of the United States Global War on Terrorism. Now that you have had time to review that issue, please provide a response.**

Response: The law regarding individuals who have been detained by the United States pursuant to the global war on terrorism is a complicated and fact-specific body of law that has been developing by federal statute and in the cases of the Supreme Court and the D.C. Circuit over the past decade. I have not handled detainee cases in many years and have no expertise in this area of the law, but I understand that the Supreme Court has

interpreted federal statutes to provide the Executive Branch with the authority to detain unlawful enemy combatants indefinitely. In *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004), the Court concluded that the detention of unlawful enemy combatants, “for the duration of the particular conflict in which they were captured, is so fundamental and accepted an incident to war as to be an exercise of the ‘necessary and appropriate force’ Congress has authorized the President to use.” Moreover, the *Hamdi* Court signaled that detained enemy combatants may be tried by “appropriately authorized and properly constituted military tribunals,” 542 U.S. at 538, and Congress subsequently enacted the Military Commissions Act of 2006, P.L. 109-366, 120 Stat. 2600 (2006), to “establish[] procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States.” If confirmed and presented with a case involving these issues, I would carefully research the applicable statutes and precedents and faithfully apply the law, as I would in any other case.

**a. How will you approach terrorism/detainee issues, if confirmed?**

Response: It is my understanding that the judges of the U.S. District Court of the District of Columbia have decided that new terrorism/detainee cases involving detainees held at the U.S. facility in Guantanamo Bay will only be assigned to judges who have previously handled these matters. To the extent that I am confirmed and assigned a terrorism/detainee case in another context, I will research the law carefully and apply it faithfully, giving full consideration and effect to the applicable federal statutes and the terrorism/detainee-related precedents of the Supreme Court and the D.C. Circuit.

**b. Will you recuse, if assigned terrorism/detainee cases?**

Response: I will review the recusal standards established in the judicial code of conduct in all cases, and would recuse myself in any case that warrants such action under those standards, including any terrorism case.

**11. You have participated in events involving the American Constitution Society for Law and Policy. There is nothing wrong with participation or membership in such groups. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, indicated that a goal of the organization is “countering right-wing distortions of our Constitution.” Do you agree with this sentiment? If confirmed, would you follow what Mr. Edelman has described as a “progressive perspective of the constitution”?**

Response: I was asked to be a panelist at a single event sponsored by the American Constitution Society. I have never been a member of the organization, nor was I previously aware of any statements that the organization’s leaders have made regarding

the organization's goals or constitutional views. Given my limited involvement with this organization, I cannot opine on any characterization of its goals. If confirmed, I would follow the text of the Constitution as interpreted by the Supreme Court and the D.C. Circuit.

**12. What is your view of the role of the courts on improving the lives of everyday citizens?**

Response: Courts have a role in making sure that everyday citizens have access to justice. To this end, judges should convey respect in all of their interactions with the litigants and should ensure that the courtroom is a welcoming environment—one in which everyday citizens are encouraged to make their arguments to the best of their ability, and the presented claims are fully heard and fairly considered. Courts should decide pending matters expeditiously for the benefit of the parties, also should also encourage the local bar to provide representation for any litigant who wants counsel, regardless of their ability to pay.

**13. Do you believe, as Delegate Norton testified, that the citizens of her district are “denied many of the ordinary rights enjoyed by other Americans.” If so, what would be your role as a District Judge for the District of Columbia, to identify and guarantee those rights?**

Response: If confirmed, my role as a judge would be to decide cases and controversies that come before me, based only on the law as set forth in federal statutes and handed down by the Supreme Court and the D.C. Circuit.

**14. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is professional integrity, which includes reverence for the rule of law, total impartiality, and the ability to apply the law to the fairly determined facts of the case without bias or any preconceived notion of how the case is supposed to turn out. I believe that I possess this attribute.

**15. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should treat everyone who appears before her with dignity and respect. She should have a calm, even-tempered, and thoughtful demeanor, and rule efficiently and decisively. Most importantly, a judge must be an effective communicator, both orally and in writing, so that the parties understand what has been decided and what to expect going forward. I believe that I meet this standard.

**16. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher**

**courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed, I would be committed to following the precedents of the Supreme Court and the D.C. Circuit, even if I personally disagreed with them.

- 17. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases of first impression involving the interpretation of a statute, I would look at the plain language of the statute, the structure of the statutory provision, and any precedents regarding analogous legal provisions or similar issues. I would employ standard canons of statutory interpretation and interpret the statute consistent with existing precedents addressing related questions. Under all circumstances, I would studiously review the opinions of the Supreme Court, the D.C. Circuit, and other federal courts of appeals that address similar situations.

- 18. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply any and all decisions of the Supreme Court or the D.C. Circuit, even those that I personally believed were rendered erroneously.

- 19. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court must respect Congress and its enactments, and should only declare a federal statute unconstitutional in the narrowest of circumstances. Such circumstances include when a statute has been enacted without authority, based on clear and controlling precedents established by the Supreme Court or a Court of Appeals.

- 20. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No, it is not proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution.

- 21. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: Managing mounting caseloads is a primary responsibility of a judge and is essential to stemming excessive litigation costs. Judges must actively engage in the supervision of cases and settlements, hold regular status hearings, streamline discovery,



rule on dispositive motions efficiently, and utilize the time and talents of magistrate judges. If confirmed, I would consider it my obligation to manage my cases, and I would employ all of these tools, and others, to achieve that goal.

**22. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that district court judges have an obligation to monitor and control the pace and conduct of the matters that are assigned to them. A federal judge can control his or her docket by paying careful attention to progression of cases, holding regular status hearings, issuing case management orders, ruling definitively and efficiently on dispositive motions, and working in concert with magistrate judges. If confirmed, I would take all of these steps, and others, to control my docket.

**23. You have spent your entire legal career as an advocate for your clients, or in public policy positions. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed as a judge, I will decide cases and controversies by applying the law to the fairly determined facts in a straightforward, neutral manner. For guidance, I will look to all relevant legal authorities, including the Constitution and the plain language of federal statutes, as well as the binding precedents of the Supreme Court and the D.C. Circuit. The most difficult part of the transition from criminal justice policy is likely to be handling the variety of subject matters and issues that are presented to a district court judge.

**24. Please describe with particularity the process by which these questions were answered.**

Response: I reviewed the questions posed and drafted the answers on my own and without assistance. I then submitted my draft answers to an official at the Department of Justice, who discussed them with me. Shortly thereafter, I finalized the answers and forwarded them to the Department for submission to the Committee.

**25. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Ketanji B. Jackson**  
**Nominee to be United States District Judge for the District of Columbia**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is to approach all cases with professional integrity, meaning strict adherence to the rule of law, keeping an open mind, and deciding each issue in a transparent, straightforward manner, without bias or any preconceived notion of how the matter is going to turn out.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: If I am confirmed as a district court judge, the litigants in my courtroom could rest assured that I will treat everyone with patience, dignity, and respect no matter what his status or station in life. I will encourage all litigants to present their arguments and evidence and establish an environment in which everyone is afforded a full and fair opportunity to be heard. Having worked with a variety of people throughout my career, I am comfortable communicating with, and relating to, people of various beliefs and backgrounds. Moreover, I am entirely capable of approaching each matter with an open mind and giving thorough consideration to every argument, no matter who presents it. I would be fully committed to doing so if confirmed as a district court judge.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Stare decisis is a bedrock legal principle that ensures consistency and impartiality of judgments. All judges are obligated to follow stare decisis, and the doctrine is particularly strong as applied to federal district court judges, who are bound to follow the precedents of the Supreme Court and the respective Courts of Appeals.

**Response of Beverly R. O'Connell**  
**Nominee to be United States District Judge for the Central District of California**  
**to the Written Questions of Senator Tom Coburn, M.D.**

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

**a. If not, please explain.**

Response: The principles of the Constitution do not change over time. Only through the amendment process does the Constitution change.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

**a. If not, please explain.**

Response: A lower court confronted with a Constitutional issue must follow all binding precedent. The principles of the Constitution don't change over time.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: First, I would examine the plain language of the statute. If the plain language of the statute can be interpreted as constitutional, that would end the inquiry. If not, I would then look to apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order) concerning the statute. If that did not resolve the issue, I would then look to apply precedent of analogous statutes from the Supreme Court, and the Ninth Circuit.

- 4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not read *Roper v. Simmons*, 543 U.S. 551 (2005) or analyzed Justice Kennedy’s opinion. Regardless of whether I agreed or disagreed with Justice Kennedy’s analysis, I would follow all applicable Supreme Court precedent if I were confirmed.

- a. **When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: Foreign law should not be used to interpret the Constitution. As a district court judge, I would follow all applicable Supreme Court and Circuit Court authority.

- i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: Not applicable.

5. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Not applicable.

- b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No. The bedrock of our American judicial system is stare decisis, relying upon our binding precedent in the interpretation of our laws.

**Written Questions of Senator Ted Cruz**

Beverly O'Connell

*Nominee, United States District Judge for the Central District of California*

U.S. Senate Committee on the Judiciary

January 25, 2013

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Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: The term "judicial philosophy" varies widely and is very personal to judges, so I cannot say which Supreme Court Justice's judicial philosophy most mirrors mine. Over the course of my seven years as a judge, my judicial philosophy has been to be prepared, to respect all litigants who enter my courtroom, to fairly and impartially judge the cases that come before me, and to faithfully apply binding precedent. It is my role to apply the law to the facts in a fair and impartial way and decide only the issues properly before the court.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: I believe that in interpreting the meaning of words and phrases in the Constitution, a district court should look to the plain meaning of the words or phrases and to binding precedent. The original intent and original meaning, which may at times overlap, can be helpful in determining the meaning of words and phrases in the Constitution.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed as a district court judge, it would be my obligation to follow all applicable precedent. Stare decisis is a bedrock principle of our justice system. Only the Supreme Court and Circuit Courts can re-visit their precedent, and only in limited circumstances.

Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) held that the San Antonio Metropolitan Transit Authority operations were not immune from the minimum wage overtime requirements of the Fair Labor Standards Act. Regardless of whether I agreed or

disagreed with that holding or the quotation in the question, I would follow all applicable Supreme Court precedent if I were confirmed.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: I would follow all applicable precedent in analyzing such an issue if I were to be confirmed. For example, in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has limited Congress' Commerce Clause power in connection with specific non-economic activities.

Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The ability of a President to issue executive orders or actions is limited to his powers delineated in the Constitution or validly granted by statute. *See, e.g., Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585-89 (1952). The United States Supreme Court has the authority to determine whether Presidential actions are authorized by the Constitution and federal statutes and thus permissible, or whether Presidential actions exceed such authority and are thus impermissible. If confirmed as a district court judge, I would follow all applicable Supreme Court authority.

Individual Rights

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The United States Supreme Court has articulated the analytical framework for determining whether something is a "fundamental right" for purposes of the Due Process Clause. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would follow all applicable Supreme Court authority and Circuit Court authority.

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has held that certain rights, such as the right to access to criminal proceedings or the right to vote, are "fundamental," thereby subjecting laws which impinge upon them to strict scrutiny under the Equal Protection Clause. The Supreme Court has also held that laws which burden a suspect class, such as race, are also subject to strict under the Equal Protection Clause. *See, e.g., Shaw v. Hunt*, 517 U.S. 899, 901 (1996). I would research the controversy in front of me and apply all binding precedent to determine whether a classification should be subject to heightened scrutiny under the Equal Protection Clause.

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: If I were confirmed as a district judge, I would apply *Grutter*, and all other controlling precedent in the area of race conscious factors in higher education regardless of my personal expectations.

**Written Questions of Senator Jeff Flake**

Beverly O'Connell

*Nominee, United States District Judge for the Central District of California*

U.S. Senate Committee on the Judiciary

January 25, 2013

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**1. What qualities do you believe all good judges possess?**

Response: I believe all good judges are prepared, fair and impartial, respectful, even-tempered, decisive, courteous, patient persons who faithfully apply binding precedent.

**a. How does your record reflect these qualities?**

Response: During the course of my seven years as a judge, I have consistently been entrusted with trying the most serious cases in our district. Many times the litigants have entrusted me with deciding the guilt or innocence of the accused, believing me to be a fair and impartial judge. My colleagues throughout the State of California have chosen me as a leader. As a result, I have been selected to participate in statewide committees addressing criminal law issues. I have also been chosen by Los Angeles Superior Court's Presiding Judge to manage three courthouses and 24 judges. The Chief Judge of the California Supreme Court has appointed me to serve as a Justice *Pro Tempore*, showing that he had confidence in my intellect and abilities as a judge. In addition, the current Chief Judge of the California Supreme Court has appointed me as a special master in a death penalty case, the most serious type of criminal case. I believe these actions establish that the litigants, my colleagues and judges of higher courts recognize my commitment to the rule of law, my preparedness and my temperament.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

Response: I believe that in interpreting the meaning of words and phrases in the Constitution, a district court should look to the plain meaning of the words or phrases and to binding precedent. The original intent and original meaning, which may at times overlap, can be helpful in determining the meaning of words and phrases in the Constitution.

**a. If so, how do you define original meaning originalism?**

Response: I define original meaning originalism as Constitutional analysis looking to the original public meaning of the Constitution at the time of the drafting of the Constitution.

**3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to**



**control itself.” In what ways do you believe our Constitution places limits on the government?**

Response: The federal government is one of limited and enumerated powers. One important way that our Constitution places limits on the government is through its reservation of powers to the states in the Tenth Amendment. For example, Article I, Section 8, and Supreme Court precedent empowers Congress to regulate instrumentalities of interstate commerce, channels of interstate commerce, and activities that substantially impact interstate commerce. However, as in *Lopez* and *Morrison*, if the activity that Congress is regulating does not fall within one of these categories, then it is beyond Congress’ power to regulate such activity.

**a. How does the Judicial Branch contribute to this system of checks and balances?**

Response: The United States Supreme Court is tasked with evaluating the constitutionality of statutes. The Supreme Court has, through its decisions, held that Congress has, on occasion, exceeded its limited authority. *See, e.g., United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000). The Supreme Court has also determined whether the President’s actions exceed his authority under the Constitution. *See, e.g., Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585-89 (1952).

**4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

**a. Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: The Supreme Court did not overrule its past Commerce Clause decisions in striking down the laws in *Lopez* and *Morrison*. Rather it distinguished prior Commerce Clause decisions. I would follow all applicable Supreme Court decisions, including *Lopez* and *Morrison*, if presented with such an issue, regardless of my personal beliefs.

**b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: As articulated in *Lopez*, Congress is limited in its regulation of activities under its Commerce Clause power to those activities regarding the use of the channels of interstate commerce, the instrumentalities of interstate commerce and those activities which substantially affect interstate commerce. *Lopez*, 514 U.S. at 558-59. All other activities lie outside the scope of Congress’ Commerce Clause authority under current Supreme Court authority.

**c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

Response: The Supreme Court has not held that any exchange of money, by itself, is subject to Congress' Commerce Clause power. Such activity would be analyzed under the test listed above.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: The federal government is one of limited and enumerated powers. The Tenth Amendment places residual authority in the hands of the states. As a result, all powers not delegated to the federal government by the Constitution, nor prohibited by the Constitution to the states are thereby guaranteed to the states. For example, the Supreme Court has held that the federal government may not require state law enforcement officers conduct background checks on prospective handgun purchasers or require states to enact legislation to dispose of radioactive waste within their borders. *See, e.g., Printz v. United States*, 521 U.S. 898, 933-34 (1997); *New York v. United States*, 505 U.S. 144, 176, 188 (1992).

**Response of Beverly R. O'Connell**  
**Nominee to be United States District Judge for the Central District of California**  
**to the Written Questions of Senator Chuck Grassley**

- 1. You indicated in your questionnaire that you were unable to find notes, transcripts, or recordings for your June 1, 2005 panel discussion on misconceptions of the United States Patriot Act. Could you provide the committee with a more detailed description of the points covered in that presentation?**

Response: The primary point of the presentation was that the United States Patriot Act did not provide unfettered discretion to law enforcement to intercept telephone conversations. The United States Patriot Act provided for judicial oversight and required applications before a judge in order to intercept telephone conversations.

- 2. You indicated that you were involved in Fetchik v. Circuit City Stores, Inc. as counsel for Circuit City. You wrote that "Circuit City retained new counsel prior to disposition." Please explain the circumstances of why new counsel was retained.**

Response: I was an associate at the time and was not included in those discussions. As a result, I do not know why new counsel was retained.

- 3. The majority of your career has been spent handling criminal cases. If confirmed, how will you prepare yourself to preside over the complicated civil matters that would come before you?**

Response: As an associate at Morrison & Foerster, I participated in complicated civil matters. If confirmed, I would have to re-familiarize myself with the relevant areas of law, including reviewing the Federal Rules of Civil Procedure, but presiding over complicated matters transcends subject matter. I would, as I do in criminal matters, work with the parties to identify the issues truly in dispute, set clear timelines for resolving those issues, make myself available to resolve disputes and rule clearly so that the parties understand the rulings. I am prepared to work hard to educate myself.

- 4. In October, 2012 you taught a class on California's Basic Felony Sentencing. One slide of your presentation was entitled "What Doesn't Work" and listed several factors that do not help prisoners from reoffending. One factor listed is "Drug education programs". Will you please explain why, in your opinion, drug education programs do not work?**

Response: This slide regarded "Evidence Based Principles" which courts in the State of California are implementing to focus limited resources on those who have the highest rate of recidivism. The point I was making in the presentation was that the studies have shown that drug education, when it consists solely of lectures, is not extremely effective. The studies have shown that a combination of factors is required, including active participation by the offender.

**5. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is to fairly and impartially apply the law to the facts without regard to personal views. I believe that I possess that attribute and that the litigants who come before me believe that I will fairly and impartially render my decisions.

**6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be even-tempered, respectful, free from bias, open-minded, courteous, patient and decisive. I believe that I meet this standard.

**7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I believe that it is essential that a judge follow the precedents of the higher courts faithfully, regardless of personal beliefs. If confirmed, I will continue to follow all applicable precedents, regardless of my personal views.

**8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would apply the canons of statutory construction. First, I would start with the plain language of the provision in question. Only if the provision was ambiguous would I go any farther in the analysis. If it was ambiguous, I would examine analogous precedent from the Supreme Court and the Ninth Circuit. If those courts did not provide any guidance I would then turn to other Circuit and District Courts concerning the statute.

**9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow the Supreme Court or the Court of Appeals without regard to my personal opinion.

**10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: One must first determine whether the case could be decided without reaching the constitutional issue. If the matter could be resolved without reaching the constitutional issue, it should be decided on that basis. If the dispute could not be resolved without addressing the question of constitutionality, the statute then enjoys a presumption of constitutionality. A statute should only be found unconstitutional if Congress clearly exceeded its powers or if the statute clearly violates the Constitution. In analyzing the constitutionality of a statute, a court should look to apply all precedents from higher courts.

**11. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No.

**12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a judge in one of the busiest courts in the United States, I have a heavy docket of criminal cases. In addition, I supervise three courthouses and 24 judges. I frequently meet with judges to discuss efficient case management techniques. I would continue to employ the techniques I have found successful. I would assess the complexity of each case, prepare myself for each matter prior to the hearing, set realistic deadlines and trial dates, work with the parties to narrow the issues in dispute, explore settlement, make myself available to rule upon disputed matters, and rule promptly and clearly to avoid re-litigating issues. If confirmed, I intend to continue these practices.

**13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that it is my responsibility to actively manage my docket. I would continue to employ the case management techniques discussed above to control the pace and conduct of litigation in my court.

**14. Please describe with particularity the process by which these questions were answered.**

Response: On December 20, 2012, I received these questions. On that same day, I responded to the questions and submitted them to a representative of the Department of Justice. On December 21, 2012, I finalized my responses with a representative from the Department of Justice. I then gave my authorization to forward the responses.

**15. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Beverly R. O'Connell**  
**Nominee to be United States District Judge for the Central District of California**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?  
How do you see the role of the judge in our constitutional system?**

Response: Over the course of my seven years as a judge, my judicial philosophy has been to be prepared, to respect all litigants who enter my courtroom, and to fairly and impartially judge the cases that come before me. It is my role to apply the law to the facts in a fair and impartial way and decide only the issues properly before the court.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I have, over the course of my seven-year judicial career, earned the reputation of being fair and impartial to both sides of every dispute. If confirmed, I will continue to fairly and impartially decide cases, regardless of the political beliefs of the litigants and regardless of whether the litigants are plaintiffs, defendants, rich or poor.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Stare decisis is a bedrock principle of our justice system. Courts are bound to follow all applicable precedent. The Supreme Court and Circuit Courts may re-visit their precedent in limited circumstances. District courts remain bound by all applicable precedent and if confirmed, I would continue to follow all applicable decisional authority.



## AMERICAN BAR ASSOCIATION

Standing Committee on  
the Federal Judiciary  
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**Please respond to:**

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April 26, 2012

**VIA EMAIL AND FIRST CLASS MAIL**

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Shelly D. Dick***  
***To the United States District Court for the Middle District of Louisiana***

Dear Chairman Leahy

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Shelly D. Dick who has been nominated for a position on the United States District Court for the Middle District of Louisiana. As a result of our investigation, a substantial majority of the Committee is of the opinion that Shelly D. Dick is "Qualified." A minority of the Committee is of the opinion that Ms. Dick is "Well Qualified" for this position.

A copy of this letter has been provided to Ms. Dick.

Sincerely,

Allan J. Joseph  
Chair

cc: Shelly D. Dick  
The Honorable Kathy Ruemmler  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

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New Orleans, LA

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# AMERICAN BAR ASSOCIATION

Please respond to:

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**Falls Church, VA 22042**  
**Tel: 703-280-4088**  
**Email: [judy.martinez@ngc.com](mailto:judy.martinez@ngc.com)**

Standing Committee on  
the Federal Judiciary  
Attn: Denise A. Cardman  
740 Fifteenth Street, NW  
Washington, DC 20005-1022

## VIA EMAIL AND FIRST CLASS MAIL

September 20, 2012

Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Andrew Patrick Gordon***  
***To the United States District Court for the District of Nevada***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Andrew Patrick Gordon who has been nominated for a position on the United States District Court for the District of Nevada. As a result of our investigation, the Committee is of the opinion that Mr. Gordon is Substantial Majority-Well Qualified, Minority-Qualified for this position.

A copy of this letter has been provided to Mr. Gordon.

Sincerely,

Judy Perry Martinez  
Chair

cc: Andrew Patrick Gordon  
The Honorable Kathy Ruemmler (via email)  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)



September 20, 2012

Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on September 20, 2012



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## AMERICAN BAR ASSOCIATION

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**Standing Committee on  
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VIA EMAIL AND FIRST CLASS MAIL

September 21, 2012

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Ketanji B. Jackson***  
***To the United States District Court for the District of Columbia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Ketanji B. Jackson who has been nominated for a position on the United States District Court for the District of Columbia. As a result of our investigation, the Committee is of the opinion that Ms. Jackson is unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Jackson.

Sincerely,

Judy Perry Martinez  
Chair

cc: Ketanji B. Jackson  
The Honorable Kathy Ruemmler (via email)  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

September 21, 2012  
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on September 21, 2012



## AMERICAN BAR ASSOCIATION

Standing Committee on  
the Federal Judiciary  
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## Please respond to:

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VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: *Nomination of Beverly R. O'Connell***  
***To the United States District Court for the Central District of California***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Beverly R. O'Connell who has been nominated for a position on the United States District Court for the Central District of California. As a result of our investigation, the Committee is of the opinion that Judge O'Connell is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge O'Connell.

Sincerely,

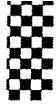
Judy Perry Martinez  
Chair

cc: Beverly R. O'Connell  
The Honorable Kathy Ruemmler (via email)  
Michael Zubrensky, Esq. (via email)  
ABA Standing Committee on the Federal Judiciary (via email)  
Denise A. Cardman, Esq. (via email)

November 15, 2012

Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.



Via Facsimile  
(802) 658-1009

December 10, 2012

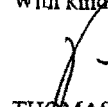
Senator Patrick Leahy  
199 Main Street, 4<sup>th</sup> Floor  
Burlington, VT 05401

**RE: Honorable Beverly O'Connell**

Dear Senator Leahy:

On Wednesday, Judge Beverly O'Connell will appear before your committee. She has been nominated to the Federal District Court. She is currently a State Court judge. She is absolutely terrific. She is smart, hardworking, and would be a terrific addition to the Federal District Court.

With kind regards,

  
THOMAS V. GIRARDI  
TVG/kc

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**Statement of Senator Dean Heller  
Judiciary Committee on the Nomination of Andrew P. Gordon to be  
United States District Judge for the District of Nevada  
December 12, 2012**

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Thank you Senator Whitehouse, Ranking Member Grassley, members of the Committee. I am honored to have the opportunity to address the Committee, once again, to express my support for my fellow Nevadan Andrew Gordon to you this morning.

I would like to begin by stating the importance of filling vacancies on the federal bench. Judicial nominations and subsequent confirmations for qualified individuals should be addressed in a timely manner. I am pleased to say that I believe we have accomplished this goal in the 112<sup>th</sup> Congress due to a bipartisan effort. In Nevada, where our delegation is certainly not one sided, it is critical for us to work together to find qualified candidates who will uphold America's principles of impartiality under law. I believe Mr. Gordon is a perfect example of this and a clear indication that with a bilateral effort, we can find middle ground in instances where it is necessary.

That being said, I believe Andrew Gordon will make a wonderful District Court judge for the State of Nevada. Mr. Gordon earned his BA *cum laude* from Claremont McKenna College in 1984 and graduated from Harvard Law School in 1987.

He currently is a partner at the law firm of McDonald Carano Wilson LLP, which he began as an associate in 1994. I would also like to add that this is the same firm which Ms. Du, a nominee that was confirmed by this committee earlier this year, came from. Mr. Gordon has focused on civil litigation and alternative dispute resolution, with a primary emphasis on complex commercial disputes.

Mr. Gordon has been featured as one of the "Best Lawyers in 2012", "Best Lawyers in America", as well as "Vegas Inc. Top Lawyers 2012". Outside of his professional duties, he is a civic leader within his community coaching his local high school lacrosse team as well as taking a leadership role in his church.

Again, thank you for the opportunity to introduce this outstanding Nevadan to the Committee. I look forward to his testimony as well as the Committee's consideration of Mr. Gordon's nomination.